

**Three Modern Japanese Dissenters:  
Minobe Tatsukichi, Sakai Toshihiko and  
Saitô Takao**

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I declare that unless otherwise acknowledged, this thesis is my own work. No part of the thesis has been submitted for any other degree or professional qualification.



## Abstract

This inquiry into the thought of three political thinkers in pre-war Japan is motivated by a concern of our own time: the absence of credible opposition in the present-day political system. The widely accepted view is that Japanese society is "conformist", and the pressure for conformity comes from traditions and cultural norms. My general position in this dissertation is that very often conformity is not only a matter of inherent cultural norms but is a political and social force appropriated, strengthened and enforced by those in power: the weak tradition of public debate has historical foundations.

However, mainstream historiography (Marxism and the school of modernisation theory), rarely pays attention to one of the most significant motors of dissent, the tension between authority and the individual, especially as it was exacerbated by the Meiji Restoration. I therefore hope to engage with previous accounts in the following ways. The first concerns definitions of modernisation, and the other, methodological, is concerned with the relations between individual and society. To highlight the role of the general populace in the emergence of political modernisation, I borrow from Jürgen Habermas his concept of a civil society and his investigation of the transformation of the "public" sphere. I also employ methodological perspectives based on the cultural theory of Raymond Williams, with his emphasis on the material dynamics of social change.

To examine the mechanics of opposition in pre-war Japan based on this combination of definition and methodology, I focus on the careers of three prominent "dissidents": Minobe Tatsukichi (1873–1948), a constitutional scholar, Sakai Toshihiko (1870–1933), a socialist reformer, and Saitô Takao (1870–1949), an opposition member of Parliament. All three were outspoken critics of discretionary power, and realised that the Meiji Restoration by no means ensured a civil society. Nevertheless post-Restoration Japan witnessed drastic changes in the forms of authority and in the people's engagement with them. Hence all three were articulate critics of government, and witnessed, recorded, and participated in those changes through their writings and political activities. The dissertation traces the contributions of each to the emergence of a Japanese civil society, and examines the viability of liberal positions within a period of highly "engineered" social change.

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## Chapter 1

# The Post-Meiji Restoration: Modernisation and the Rise of the Authoritarian State

### 1.1. Introduction: modernisation and discretionary power

In any study of national governance the following question seems inescapable: is it possible to pursue national unity and free government simultaneously? How is it possible to find a balance between authority and the individual? The question is crucial for any society, particularly so with respect to the formation and evolution of government. Nevertheless political authority, either realised in the form of government or perceived as coterminous with the state, is primarily a construction of the perceptions and choices of a people, although history and tradition will give a particular hue to such “constructed” authority. In this study of Japanese conditions I hope to show how this abiding tension is present in modern Japan.

Absolutism and constitutionalism therefore constitute complementary expressions of an informing dynamic. Hobbes of course, concerned with the restoration of social order in a period of civil war, endorsed absolute power. He proposed absolute submission to Leviathan, “an undivided sovereign power”, which might be one man or an assembly of men. Locke, on the other hand, denied absolute power. Lawmakers make laws, he says, but they also have to obey them.<sup>1</sup> Locke asserts that legitimate government must have the consent of the governed.

Yet these contrasting views towards legitimate political authority reflect a common concern for good government in the defence of intellectual and political freedom. Deeply sceptical about man’s ability to possess absolute knowledge, which

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<sup>1</sup> See, for instance, Richard H. Cox (ed.), *Second Treatise of Government* (Illinois: Harlan Davidson, 1982), pp. 51-3. All subsequent references to Hobbes will be to the revised student edition of *Leviathan*, Richard Tuck (ed.) (Cambridge: Cambridge University Press, 1996).

itself was a strong defiance of the prevailing scholasticism of the time, Hobbes endorsed a strong state that could protect individuals from the influence exercised by the restored Church of England. Locke defended the political opposition mounted by Parliament against the arbitrary rule of King Charles II. The contrasts reflect the social and political conditions of their times and the divergent results of a shared concern.

In our own times Jürgen Habermas has described the shift from absolutism to a civil society as a transformation in the “public” sphere. In his civil society, state authority is “monitored” through “informed and critical discourse by the people”.<sup>2</sup> On a cursory view it may seem difficult to detect the emergence of such a civil society in post-Restoration Japan. Yet the Meiji Restoration appears to have ushered in elements of absolutism and a civil society simultaneously. How was this possible? And if so, what shifts in the public sphere occurred, and how was it transformed? This study assumes a radical metamorphosis in the Japanese “public” sphere and its transformation by the tensions of post-Restoration politics and social change.

Indeed the tension between collective well-being and the rights of the individual, between unaccountable government authority and participatory democracy, is the leitmotiv of Japan’s modernisation. In the evolution of Japan from a federation of *han* domains under the rule of the Tokugawa shogunate to a centralised modern state, this tension is central.

The tension is observable both at personal and at national levels, as a drastic oscillation of social policy or thought, a feature common throughout modern Japanese history. Thus Fukuzawa Yukichi, a staunch critic of Confucianism and a champion of *bunmei kaika* (civilisation and progress), became a strong imperialist in his attitudes towards the rest of Asia in the 1880s. Ōkuma Shigenobu, who sought the establishment of parliament and who was expelled from government as a result, is also the very prime minister whose Cabinet submitted the Twenty-one Demands to China in 1915, an action that confirmed Japan’s image as international aggressor. All opinions mutate, and it is dangerous to generalise from individual cases. Yet such “changes of mind” are

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<sup>2</sup> Jürgen Habermas, *The Structural Transformation of the Public Sphere* (Cambridge: Polity Press, 1989).

recognised by historians as highly representative of Japanese intellectuals and political leaders and are given the name “*tenkô*” (recantation).

The oscillation is similarly drastic in domestic policy. In 1868 the Charter Oath and the repressive Five Board Notices coincide, in 1875 the promise to open parliament coincides with various press laws and laws to restrict political activities, and in 1925 universal male suffrage is contemporary with the Peace Preservation Law, a law used to oppress domestic opposition in the late 1920s and 1930s. The Meiji Constitution of 1889, as I hope to show, encapsulates such tensions very vividly. Simultaneous implementation of “liberal” and “oppressive” measures is a consistent pattern in post-Restoration Japan.

How to assess this tension influences the historian’s assessment of Japan’s modernisation. The so-called “Marxist” historians, whose views are influenced by that of the Communist International of the 1930s, tend to ignore the tension, since they are more concerned with the authoritarian aspect of the Japanese State. On the other hand, one school of thought (modernisation theory), which is more interested in Japan’s economic and industrial progress, also tends to underplay the tension. It claims that it was understandable to use oppressive measures to implement a liberal policy. It is political wisdom to implement “carrot-and-stick” measures: Japan is no exception in this respect.

Both views, I think, are unsatisfactory. The “Marxist” view tends to ignore the diverse debate about forms of government that persisted throughout pre-war Japan until it was forcibly terminated in the 1930s. Instead, the tension is subsumed into reductive “feudal” elements of Japanese society. The interpretations of the modernisation school also have problems. When we assess Japan’s history, from the Meiji Restoration to the outbreak of the Pacific War, as one integrated sequence, the “political wisdom” argument seems more than a little threadbare: Japan’s experience highlights problems of government, as well as its benefits.

There seems, however, to be broad consensus that the pre-war Japanese state was indeed authoritarian. A key question therefore is whether or not the social and political conditions of pre-war Japan could justify the operation of such a state and by what

criteria. Also, when we discover that the very system that was created in the Restoration was inseparable from the rise of the militant state in the 1930s, it becomes necessary to examine the underlying trajectories of the Meiji polity. In my view the most effective way to expose this divided heritage is to listen to those who lived through the period, who, through their writings and political activities, were part of its collective conscience. This study therefore proposes a close examination of the lives and careers of three post-Restoration radicals in order to show how their thought and behaviour illuminate the larger problems of their society.

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In his well-known account of “the system of irresponsibilities”, Maruyama Masao gives a most penetrating analysis of the problems of the modern Japanese political system. Maruyama was concerned with the rise of militarism and xenophobic nationalism in the 1930s. In his 1949 essay Maruyama analyses both the “psychological” and “institutional” problems of the political system that resulted in the rise of the militaristic state.<sup>3</sup> The absence of accountability is the key to both types of problem.

Maruyama links the system of irresponsibilities to obligation. Obligation takes precedence over personal responsibility. The hierarchical structure in which the sense of “obligation” is the major commanding force results in a fragmented, arbitrary structure of authority. In this sense, the “public” is not created by “informed and critical discourse by the people”, but is the creature of “hierarchy”. In this hierarchical structure, autonomy is lost, and one becomes subject to “blind outside forces”: the casualties of such forces are objective vision and effective leadership.<sup>4</sup>

Thus, in his account of Japan’s war-time leadership, Maruyama vividly describes the breakdown of the system, in which the Army and the Navy were constantly

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<sup>3</sup> Maruyama Masao, “Thought and Behaviour Patterns of Japan’s Wartime Leaders”, *Thought and Behaviour in Modern Japanese Politics* (London: Oxford University Press, 1963), pp. 84-134.

<sup>4</sup> Maruyama here quotes the former United States Ambassador Joseph Grew: “Their view of reality was hopelessly obfuscated” because “when the obligation runs counter to their own interests, as they conceive them, they will interpret the obligation to suit themselves and, according to their own lights and mentality, they will very likely be perfectly honest in so doing” (*ibid.*, p. 96).



bickering, and within the Army its War Minister and the General Staff Office (*sanbô-honbu*). The Navy was also beset by similar problems. Maruyama does not concern himself with the flaws of institutions, but instead tries to identify the source of the problems in Japanese traditions. His approach is understandable, since he is essentially concerned with norms of behaviour.

Crucially, however, Maruyama pays scant attention to the political role of the population as a whole. Thus although the Meiji Restoration was by no means a popular revolution, the question of how to bring the people into the national structure was a major concern for the political leaders from the very beginning.<sup>5</sup> Certainly Maruyama most articulately identifies the key elements of modern Japanese political conflict, the recurring clashes between those seeking concentration of power (statism) and those seeking public support (liberalism).<sup>6</sup> However, he does not fully assess the role of the people to explain the origins and evolution of the tension.<sup>7</sup> Instead he identifies the early Meiji leaders as promoters of “liberal elements” and assesses Japan’s descent to militarism as the gradual overtaking of the liberal tradition by “authoritarian elements” in the 1930s. Yet it is difficult to explain this shift without paying attention to the

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<sup>5</sup> Some historians, including Irokawa Daikichi, Yasumaru Yoshio, Miyachi Masato, and Carol Gluck, observe that the people were not the mere recipients of government policy but often resisted new measures. The leaders were deeply aware of their resistance and made enormous efforts to tame it. See Gluck, *Japan's Modern Myths: Ideology in the Late Meiji Period* (Princeton, N.J.: Princeton University Press, 1985).

<sup>6</sup> “*Sonnô Jôi*” (Revere the Emperor, Expel the Barbarians) and “*kôgi kôron*” (public debate and opinions) are two doctrines behind the Meiji Restoration, and their interaction shaped post-Restoration Japanese politics and society as if they were “two main themes that recur alternately in a sonata”, according to Maruyama. See Maruyama, “Meiji Kokka no Shisô,” *Senchû to Sengo no Aida: 1936-1957* (Tokyo: Misuzu Shobô, 1976, reprinted 1982), p. 204. *Sonnô Jôi* evolved into “*kokken-ron*” (statism), while “*kôgi kôron*” became “*minken-ron*” (people’s rights). The political necessity for unity (to stave off foreign colonisation) and Japan’s historical conditions (the Meiji Restoration as a shift from feudalism to absolutism) resulted in their co-existence. For the early Meiji leaders, national unity and individual advancement were thus inseparable, according to Maruyama. But this unity began to crumble with the advent of imperialism and capitalism (*ibid.*, p. 228).

<sup>7</sup> This neglect of the people influences Maruyama’s interpretation and analysis of the evolution of political power exercised in Japan. He recognises the early Meiji leaders’ attempt to suppress the Jiyûminken Undô, a movement for popular rights, as the origin of an absolute regime, and that this regime created “the various symptoms of political disintegration”. The ineffectual Parliament led to “the pluralism of political power”, which he calls the “original sin of modern Japan.” But Maruyama’s assessment of the early Meiji leaders is favourable, in that he sees their diverse experience, sense of responsibility, and charisma as desirable requirements for political leaders. Thus the system of irresponsibilities loomed large when “the autocratic sense of responsibility receded; and no democratic sense of responsibility arose to take its place”. See Maruyama, “Thought and Behaviour Patterns of Japan’s War-time Leaders”, pp. 126-8.



leaders' perception of the people, how they responded to their resistance, and how they tried to bring the people into the political system. The early Meiji leaders were both oppressors and reformers, and such duality can only be explained by their attitudes to the people they governed.

This study is deeply indebted to Maruyama's work, but I will use the concept of "discretionary power" instead of irresponsibilities in order to emphasise "institutional" problems. By discretionary power, I mean executive power exercised without "legal constraints", although the very meaning of "legal" requires further clarification. I will leave exact definitions of the modes of constraint to my discussions of the three people in this study, but I will assume that resistance to such power itself constitutes an attempt to form a civil society. Thus although my primary concern is with individual responses to authority (and Japanese statehood), I wish at the outset to outline some of those forces which prompted, in time, a tradition of opposition to the centres of power. That tradition is rooted, in a highly visible fashion, in responses to discretionary power. For Japan's "coerced" modernisation not only required discretionary power in government but also resulted in an institutionally fragmented government, in an ideologically authoritarian state, and a tradition of creative resistance.

How, therefore, does the concept of discretionary power help us to understand the problems of Japan's nation-building? To answer the question, English constitutional history provides us with useful insights. Thus A. V. Dicey, speaking of the English situation, defined the discretionary powers of government as "every kind of action which can legally be taken by the Crown, or by its servants, without the necessity for applying to Parliament for new statutory authority".<sup>8</sup> The history of the English constitution was to put "a legal check" on the exercise of discretionary powers, shifting the power from the King to Parliament. From this process emerged "the two guiding principles" of the English constitution, the sovereignty of Parliament and the rule of law. Moreover the sovereignty of Parliament is linked to that of the electorate and of the people, and thus it represents the nation. The rule of law is synonymous with the authority of the courts.

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<sup>8</sup> A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, 10<sup>th</sup> edition (London: Macmillan Press, 1959), reprinted 1975, p. 423. The first edition was published in 1885.

Thus the two principles are fundamental to the operations of English society: emphasis on general (public) agreement and equality under the law. “If the sovereignty of Parliament gives the form, the supremacy of the law of the land determines the substance of our constitution.”<sup>9</sup>

Dicey however suggests several problems inherent in discretionary power by pointing out what would happen if the two principles, the supremacy of Parliament and the rule of law, are breached. One problem is that discretionary powers would undermine free government. In this respect legal equality is inimical to discretionary power.

The rule of law, which means equality under law, derives from the tradition of common law. Whoever exercises power, he or she is subject to possible conflict with ordinary common law, if he or she violates it. In principle, common law does not discriminate between the holder of power and his subjects. “In England the powers of the Crown and its servants may from time to time be increased as they may also be diminished. But these powers, whatever they are, must be exercised in accordance with the ordinary common law principles which govern the relation of one English man to another.”<sup>10</sup>

Thus legal equality works as a check on any collective action. For instance, the presence of a standing army potentially contains the tension between national independence and free government. Dicey says, “With a standing army the country could not, they feared, escape from despotism; without a standing army the country could not, they were sure, avert invasion; the maintenance of national liberty appeared to

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<sup>9</sup> *ibid.*, p.471. Compare Dicey’s statement with the following passage by J. K. Bluntschli: “The State has two aspects: rest and movement, continuance and progress, body and spirit. There are two political sciences corresponding to this internal distinction, Public Law and Politics; and so too there are two great principles which, like two stars, illuminate and fructify the life of the State, conditioning both its form and content: justice (*justitia*) and the public weal (*salus publica*). Statesmen have especially the latter before them, jurists the former. The idea of justice determines public law, the idea of welfare guides politics” (Bluntschli, *The Theory of the State*, authorised English translation from the sixth German edition of his *Allgemeines Statsrecht* [sic], Oxford: Clarendon Press, 1892, p.70). The first volume of the third edition of *Allgemeines Statsrecht* (1863) was translated into Japanese by Katô Hiroyuki and published by the Education Ministry in 1872. Part of Katô’s translation and the German original are included in Katô Shûichi and Maruyama Masao (eds.), *Honyaku no Shisô, Nihon Kindai Shisô Taikei*, vol. 15 (Tokyo: Iwanami Shoten, 1991), pp. 43-90.

<sup>10</sup> Dicey, *op. cit.*, p. 387.

involve the sacrifice of national independence.”<sup>11</sup> England solved this problem by means of the supremacy of common law. Army law is subject to common law so that the soldier must be a citizen first before complying with military regulations. Conflicts of loyalty are therefore meant to be resolved by resorting to higher principle.

By contrast Japan took exactly the opposite course, separating the military from the “common” community. Bureaucrats were also deliberately isolated from the “public” sphere. In these areas notions of general accountability were neither encouraged nor established in precedent. In these and other ways Japan’s modernisation failed to create a public arena where the people as a whole could pursue a common agenda.

Dicey also emphasises that discretionary powers tend to undermine the legitimacy of government.<sup>12</sup> Who, for example, authorises the collection of taxes? Who legitimately distinguishes the army from a private militia? The answer to both questions is Parliament. Parliament has the ability to transform private activities into public ones. What distinguishes the tax collector from the thief is that the former’s act is endorsed by Parliament and the latter’s is not. This mandate of Parliament derives from the concept of popular will. The will of the people is hard to define, Dicey acknowledges. Yet in his definition, Parliament as an institution, elections as a means, and the people as a principle are combined to give the concept of general acceptance a real political function. Discretionary powers without such backing are always vulnerable to the alienation of the popular will.

Dicey argues too that the exercise of discretionary powers without perceived general acceptance can erase the form of constitutional government. Very relevantly the system of irresponsibilities formulated by Maruyama highlights how a cluster of political institutions, including that of the emperor, the military and bureaucrats, worked in the absence of a containing political structure. Maruyama attributes the cacophony of

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<sup>11</sup> Dicey, *op. cit.*, p. 298.

<sup>12</sup> Compare Maruyama, who says, “... the pluralism and irresponsibility of power in war-time Japan has a deep cause. It obeys a law of dynamics common to absolute monarchies, everywhere, especially when they have reached their stage of decadence” (Maruyama, “Thought and Behaviour Patterns of Japan’s War-time Leaders”, p. 125). Maruyama here seems to refer to discretionary power in using the expression “a law of dynamics common to absolute monarchies”. My point is that discretionary powers are pluralistic and irresponsible, whoever exercises them.

institutions to the dominant psychology of obligation, as we have seen, and also to the disappearance of central authority due to the retirement of the early Meiji oligarchs. Yet, as Dicey demonstrates, discretionary powers can lead to institutional problems, because they undermine public will, which provides constitutional government with its form, legitimacy, and direction.

A third relevant problem Dicey identifies is that discretionary powers prevent the formation of a civil society where political authority is constructed and monitored by public consent and debate. This concept of a civil society is a logical consequence of constitutional government as envisaged by Locke. If power is not absolute, it must be “created”. Constitutional government needs a civil society where general agreement and discussion are ensured, because they are indispensable for such construction. It is not enough that political power is limited, but it must be allowed to form.

Once again we are back to the abiding question of the relations between authority and the individual. The tension exists in any society, and freedoms of speech and assembly are crucial to settle the tension. Constitutional government and freedoms of speech and assembly are the two sides of one coin. If one disappears, the other also ceases to exist. The contradiction of the Meiji Constitution is, as I hope to show, not only that it endorses imperial absolutism and constitutional government simultaneously, but also that it fails to protect those freedoms from the encroachment of authority.

Discretionary powers are therefore a one-way and open-ended exercise of power, incapable of sustaining debate in a civil society. Yet national unity and free government are not competing ideas, but inspire the “form” and “substance” of constitutional government. They complement each other, and check each other so that the whole system can cohere. The substance props up debate, while the form is strong enough to sustain the dynamics of debate. If on the other hand national unity is detached from free government, it prompts undisciplined, arbitrary powers. By endorsing discretionary powers, the Japanese, through the Meiji Constitution and its operation, created their own Leviathan, institutionally fragile and ideologically absolutist.

Extenuating factors do of course exist. There were various forces which prompted Japan to rely on discretionary power. After the Restoration, government was

both initiator and guardian of far-reaching social and political reform. Thus Japan introduced, symptomatically, the idea of administrative law, derived from the European continent, which gives precedence to the role of government in regulating civic life.<sup>13</sup> Yet Dicey says of the French concept of *droit administratif*, “In France, on the other hand, whilst the powers based in the hands of the administration might be diminished, it is always assumed that the relationship of individual citizens to the State is regulated by principles different from those which govern the relation of one French citizen to another.”<sup>14</sup> Administrative law therefore contrasts sharply with English common law. And as the role of government expanded in Japan, so did the role of administrative law.

A more important reason, however, is the perceived need for prompt modernisation. The “late comer” theme is not just an interpretation given by historians, but was also amply used by the Meiji leaders to carry out reform, and then to suppress political opposition. To catch up with the West speed was considered crucial. Here existed the usual conflict between ideals and “necessity”. Yet this justification, pragmatic or otherwise, was also responsible for the further skewing of relations between authority and the individual. “Principles” were often sacrificed to “necessity”, and “necessity” tended to be defined by those in power. But such collective self-justification also began to collide with domestic and international realities, with the emergence of a pluralistic society at home, and with nationalism in various parts of the world after World War I. As we will see, successive governments responded to the gap between “necessity” and those realities with various compromises. Yet those compromises tended only to involve the further use of discretionary power.

Discretionary power therefore was crucial for Japanese governments to carry out drastic reform, but it was also responsible for the fatal undermining of reform. In the

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<sup>13</sup> Administrative law is a key concept of continental law. Dicey compared administrative law and the common law tradition, and criticised the former as “discretionary”. For him the dominance of the common law in England is in sharp contrast with the French concept of *droit administratif*. “*Droit administratif*, in short, rests upon ideas absolutely foreign to English law: the one, as I have already explained, is that the relation of individuals to the State is governed by principles essentially different from those rules of private law which govern the rights of private persons towards their neighbours; the other is that questions as to the application of these principles do not lie within the jurisdiction of the ordinary courts” (Dicey, *op. cit.*, p. 388). Dicey’s view echoes that of Locke.

<sup>14</sup> *ibid.*, p. 388.

remainder of this chapter I will trace the process by which the various discretionary powers were created, and which, by the 1930s, led to the subversion of the ideals of the Meiji State.

## **1.2. The Charter Oath and the Five Board Notices: promise and betrayal**

National unity and social progress were the key principles under which the Meiji leaders initiated radical social and political change. The participation of the people was recognised as crucial to build a new political community and emphasised through various “egalitarian” measures. At the same time the people had to be “controlled”. Despite their “enlightened” ideas, the early Meiji leaders had to rely on various discretionary measures, which included a reinforced role for the military, newly impressed “national” symbols, and arbitrary edicts, in order to consolidate their power, because they lacked a solid power base. This section aims at locating the origins of these discretionary powers and demonstrating that the tension between national unity and free government was present from the outset.

The Meiji Restoration is inseparable from the global situation in the early nineteenth century. Growing industrial activities in major European countries, such as Britain, Russia and France, fanned commercial ambition and technological development, particularly in navigation, and fuelled the search for markets abroad. “The state” became a major organ in the support of private enterprise.<sup>15</sup> This nineteenth century *weltanschauung*, in which nations competed with each other through trade backed by a strong military, dominated the world until the end of World War I. It was this worldview, and the concept of the state based on it, which inspired the Meiji leaders in their quest for national unity and change.

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<sup>15</sup> See Eric Hobsbawm, “The nation as novelty: from revolution to liberalism”, *Nations and Nationalism Since 1780* (Cambridge: Cambridge University Press, 1990), ch 1.



However, the degree to which the Meiji Restoration was initiated by domestic causes as well as by international influence has been one area of contention among historians.<sup>16</sup> Hence it is true that the bakufu system was under attack from all fronts in the early nineteenth century. Farmers' and city dwellers' protests became more common. Each domain, as well as the Tokugawa government, was struggling to make ends meet. The fact that the early Meiji leaders came from peripheral but economically and politically self-sufficient domains, such as Satsuma, Chôshû, Hizen, and Tosa, also suggests the importance of domestic factors. It was those relatively young, low-ranking samurai who, through their own experience of dealing with their domain affairs, came to understand "the wealth of society" and directed the country into an utterly different political system.

Nevertheless it was international influence, and those leaders' understanding of the global situation, that shaped the major characteristics of the Meiji reform. The arrival of the U.S. naval squadron led by Commodore Perry in Tokyo Bay in 1853 triggered volatile and intense debate inside the country about alternative forms of government. In 1854, the Tokugawa government signed a friendship treaty with the United States, which was followed by similar treaties with Britain and Russia, ending the country's 200 years long international isolation. The opening up of the country resulted in economic and political instabilities (inflation was high), and fuelled anti-foreign sentiment. Indeed, until around 1860, foreigners were often targets of attack by anti-foreign samurai. Yet those anti-foreign patriots became pro-foreign when they witnessed at first hand the military and technical might of the West. Ôkubo Toshimichi, Kido Takayoshi, and other future Meiji leaders were all initially anti-foreign. But their contact with the West converted them to belief in co-operation. Ôkubo saw Kagoshima, the capital of his domain, bombarded by British ships in retaliation for the murder in 1863 of a British

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<sup>16</sup> During the debate about the nature of Japanese capitalism in the early 1930s (the debate between the Kôza-ha and Rônô-ha schools of thought), the emphasis was shifted to Japanese domestic factors, such as the growing contradictory character of the bakufu system. Since the 1960s, however, many historians have tried to interpret the Meiji Restoration by combining both internal and external factors. Historians also argue whether there was a real threat of foreign colonisation. See the debate between Tôyama Shigeki and Inoue Kiyoshi, and Tôyama Shigeki and Shibahara Takuji. For a useful summary of the debate, see Tanaka Akira, "Kurofune Raikô kara Iwakura Shisetsudan e", in Tanaka (ed.), *Kaikoku, Nihon Kindai Shisô Taikêi*, vol. 1 (Tokyo: Iwanami Shoten, 1991), pp. 448-52.

merchant by a samurai of his domain. And the following year Kido witnessed the major port city of his domain, Shimonoseki, under attack by ships from Britain, France, the United States and Holland. Such experiences were decisive.

Contact with China also reinforced the perceived need for national unity. Takasugi Shinsaku, one of the early revolutionary samurai, who in 1863 organised samurai-farmer garrisons in his native Chôshû domain, went to Shanghai in the previous year. The Chinese city had become one of the first treaty ports after the first Opium War of 1839–1841, and Takasugi witnessed China's "colonisation" by the West. Takasugi saw the Qing Dynasty attacked both from within and without, witnessing the domestic chaos caused by the Taiping Rebellion of 1851–1864, and the poor living conditions of indigenous Chinese exploited by the Western powers. For him national unity became of utmost importance.

These revolutionaries came to realise that the country needed a new political structure that would be independent and internally secure. Regardless of whether the Western powers did or did not have aggressive intentions, they saw the West both as a genuine threat and as a model of a new society. Hence the 15-year period of domestic unrest that followed the signing of the friendship treaties was also a period of diverse debate, albeit taking place privately, about alternative forms of government. Ideas about international law, republicanism, constitutional government, and the role of parliament, were all introduced during this period<sup>17</sup>, and culminated in the Charter Oath of 1868, the first constitutional text issued by the Meiji provisional government. Thus began the search for a new society: for these leaders, "the state" (*kokka*) was both a political utopia and a practical necessity.

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<sup>17</sup> Although some Japanese knew about the British parliamentary system through Dutch sources as early as 1789, the Chinese defeat in the Opium Wars, and the increasing presence of the Western powers prompted interest in Western political systems in general. A Chinese translation of Henry Wheaton's *Elements of International Law* was reprinted by the Tokugawa government's Kaiseisho in 1865. Katô Hiroyuki, then working at the Bansho Shirabesho, the government's central institution for Western learning, advocated the introduction of a British-style Parliament to avert the country's imminent crisis in his "Saishinron" in 1861. The essay was then read only privately. "Saishinron" is included in *Kenpô Kôshô, Nihon Kindai Shisô Taikei*, vol. 9 (Tokyo: Iwanami Shoten, 1989), pp. 3-25. In 1866, Fukuzawa Yukichi translated the United States Declaration of Independence. For Japanese knowledge of the British parliamentary system, see Asai Kiyoshi, *Meiji Rikken Shisôshi ni okeru Igarisu Kokkai Seido no Eikyô* (Tokyo: Yûshindô, 1969).



Ideals clashed with realities. The Meiji government lacked a solid power base, and had instrumental fragility. The composition of those who gathered around the emperor and ousted the Tokugawa government in the Ôsei Fukko coup d'état on 9 December 1867, was highly diverse. They included court officials, young samurai in anti-bakufu domains, and their lords. They had varying attitudes towards modernisation and foreign influence, and included both Western-educated "reformers" and students of nativism (*kokugaku*) with strong anti-foreign sentiments. Yet they were united in their belief that the Tokugawa government had lost credibility in the running of affairs in the face of Western threats. Their conflict, however, soon became visible.<sup>18</sup>

Many in fact were still involved in civil war with the pro-bakufu forces, as well as engaging in their own internal wars of adjustment. Furthermore military victory could only partially legitimise their rule. Hence military victory must be consolidated by means of new "national" symbols, and decrees. These edicts are important tools not only for preventing social disorder but also for discrediting their opponents. Yet even as the Meiji leaders promoted the concepts of a united nation, of imperial government and a convenient "public" so as to buttress their own authority, so also did they attempt to calm their own fears. In devising the blueprint of a new order they also attempted to accommodate themselves to their own actions: the plethora of their public statements suggests both unease and reformist zeal.

Hence the extraordinary number of edicts issued by the Meiji provisional government reflects a tension between ideals and necessity, as well as defining the tension between national unity and free government. In 1868 alone, the government issued 1,171 edicts.<sup>19</sup> These edicts can be divided roughly into two groups; one intended

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<sup>18</sup> In May 1869, for instance, a group of domain representatives who had joined the Meiji government complained that Mori Arinori was advocating the banning of samurai from carrying a sword. They also complained that the leadership led by Iwakura Tomomi, Kido and Ôkubo ignored their opinions, despite the initial agreement on "public debate". See Miyachi Masato, "Haihan Chiken no Seiji Katei," Banno Junji and Miyachi (eds.), *Nihon Kindaishi ni okeru Tenkanki no Kenkyû* (Tokyo: Yamakawa Shuppan, 1985), pp. 48-9. As the main causes of concern for the Meiji leaders as to the stability of their government, Miyachi cites the pro-bakufu forces, domain representatives critical of their policy, and popular discontent.

<sup>19</sup> Those edicts are compiled in *Hôrei Zensho*. Compilation was started by the Dajôkan office in 1885. The edicts issued after October 1867 were compiled retrospectively in 1886.

to legitimise and construct the new government, and the other to maintain social order. Most important and representative of the first group is the Charter Oath, and that of the second the Five Board Notices.

The two documents were issued almost simultaneously, just four months after the Restoration.<sup>20</sup> They are markedly different in character, one being of a constitutional nature and the other a brief criminal code. They were in fact intended for different audiences. The former was for the political elite, such as court officials and heads of the *han* domains, and was promulgated through an elaborate court ceremony. The latter was for the general public, and was issued through a traditional way of disseminating decrees to the public, erected street boards. Both reflect the Meiji leaders' urgent need to claim their authority, and reveal the dilemmas that they faced in legitimising their rule.

The Charter Oath is a five-article text, promulgated as the emperor's pledge to the "gods". Its first article reads: "Assemblies shall be widely convoked and all measures shall be decided upon by open discussion."<sup>21</sup> The article asserts a new political authority backed by "*kôron*" or public debate. The public in this case is a limited one, as the rigid status system of the Tokugawa period is still in place. Yet the article clearly announces a new departure for it entails the denial of the domain system, the key foundation of the Tokugawa government.<sup>22</sup>

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<sup>20</sup> The Charter Oath and the Five Board Notices are included in *Hôrei Zensho* (1868) as Decrees No. 156 (14 March) and No. 158 (15 March), respectively.

<sup>21</sup> This English translation is provided by Nobutaka Ike, *The Beginnings of Political Democracy in Japan*, (Baltimore: The Johns Hopkins Press, 1950), p. 36. Several English translations are available, W. McLaren's version perhaps being the best known ("Japanese Government Documents," *Transactions of the Asiatic Society of Japan*, XLII-1, 1914). Yet McLaren's translation is less clear about Article 2, in which he translates "*keiron*" as social order. "*Keiron*" has a diverse meaning, but I agree with Ike in his emphasis on the economic implication.

<sup>22</sup> This assertion may be contested, however. For the Charter Oath had undergone several revisions. Yuri Kimimasa of the Echizen domain wrote the first draft, which was revised by Fukuoka Takachika of the Tosa domain. Fukuoka's draft was revised by Kido Takayoshi of the Chôshû domain and Kido's version became the final text. Fukuoka's draft includes the phrase "*rekkô kaigi o hiraki*" (an assembly of *han* lords shall be convoked). Robert Spaulding speculates that Kido himself left the phrase unchanged and replaced it with "*hiroku kaigi o okoshi*" (assemblies shall be widely convoked) only under the influence of Iwakura Tomomi, a court noble. (See Robert Spaulding, "The Intent of the Charter Oath", *Studies in Japanese History and Politics*, The University of Michigan Press, 1967.) Thus government leaders may then have had different views about the role of the *han* lords in the new system. However, it is difficult to assume that those leaders, who themselves were not *han* lords, would have envisaged a decision-making body that would exclude them. In fact, Kido began to discuss with other leaders the abolition of the *han* system later

The second article asserts that “The government and the governed shall be of one mind, and the national economy and finances shall be greatly strengthened”. It emphasises the importance of economic development, reflecting the Meiji leaders’ desire to make the country not only militarily but also economically strong. It calls on “high and low” to be united to promote financial activities and the economy. The idea of *Fukoku Kyôhei* (Enrich the Nation, and Strengthen the Military), which will become the key slogan of modernisation, is already prominent.

Thus the Charter Oath is a radical political statement which denounces the existing system as “absurdist habit” (*rôshû*), and elevates the emperor to lead this “revolution”. The emperor is presented as a champion of modernisation. Thus Article 4 reads: “All absurd customs of olden times shall be abandoned, and all actions shall be based on international usage.” And Article 5: “Knowledge shall be sought for all over the world, and thereby the foundations of Imperial rule shall be strengthened.” The abiding message is the need for national unity so as to make Japan a modern state, and the reason for it is that the country is in such a serious crisis that it requires “unprecedented reform”. To carry out such reform, national unity must be exerted, and the state the writers envisage is fairer and better because it is dictated by *kôron*, public debate.<sup>23</sup>

The Five Board Notices, on the other hand, are clearly repressive. They evoke the “old” morality and regulations issued by the Tokugawa regime to maintain social order. They contain seven regulations, three written on one board, and each of the remaining four on one board. The first three orders relate to the observance of the five

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in the year. See *The Diary of Kido Takayoshi, Volume I: 1868-1871*, translated by Sidney Devere Brown and Akiko Hirota (Tokyo: Tokyo University Press, 1983), p. 116.

<sup>23</sup> The interpretation of *kôron* differed even among the key writers of the text. Inada Masatsugu suggests that Yuri Kimimasa’s usage implies the people as a whole, while that of Fukuoka Takachika is restricted to *han* lords and other members of the political elite. Yuri was influenced by Yokoi Shônân, a pro-Western Confucian scholar, and Sakamoto Ryôma, a leader of the pre-Restoration anti-bakufu movement, both of whom more or less endorsed the Anglo-American style of people’s participation in politics. Inada quotes Yokoi saying in *Kokuze Sanron [Three Principles of National Policy]* “In England, government operates based on what ordinary people think. All people are consulted about each action to be taken by administrators, major or small. If it is not likely to benefit them and not favoured by them, the action is not imposed”. *Kôron* was later used widely by *jiyûminken* (freedom and people’s rights) activists and *Taishô* democratic movement activists seeking wider public participation in the political decision-making process.

cardinal rules of Confucianism<sup>24</sup>, compassion for the weak and those who have lost their spouse, a ban on murder, arson and other criminal acts. The fourth ban is on class action in political protest and in fleeing from the land. The fifth ban is on Christianity, and the seventh ban is on leaving one's own *han* domain. The sixth ban on violence against foreigners complies with the country's opening up to the rest of the world. The Five Board Notices are an expression of the Meiji leaders' strong concern for the maintenance of social order, and they are among a number of such regulations conceived with this end.

Thus the Charter Oath and the Five Board Notices appear at odds with each other, calling for the acceptance of "universal" law on the one hand and tight domestic control on the other. Typically, the ban on the dissemination of Christianity in the Five Board Notices contradicts the Charter Oath's internationalism; it met with immediate protest from Western countries, and was lifted in a few years.

This seeming duality, with openness and oppressiveness in uneasy relation, is a major characteristic of the decrees of the Meiji provisional government and occurs in other sections of the texts as well.

Thus the ban on free movement in the Five Board Notices comes with a memorandum which encourages the people to speak up if they have a complaint to the government. This is a repetition of similar decrees issued in the previous months in the same year.<sup>25</sup> Yet the pattern is the same, simultaneous endorsement of a kind of freedom

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See Inada Masatsugu, *Meiji Kenpō Seiritsushi [The Establishment of the Meiji Constitution]*, vol. 1 (Tokyo: Yūhikaku, 1960), pp. 1-22.

<sup>24</sup> The five cardinal rule of Confucianism are loyalty to one's master, close relationship between father and son, different roles for husband and wife, importance of seniority, and trust between friends.

<sup>25</sup> At least two decrees were issued to this effect, Decree No. 86 (9 February) and Decree No. 137 (4 March), both in *Hōrei Zensho* (1868). A partial translation of Decree No. 86 is as follows: "At this time of the Restoration of imperial rule, the utmost task (of the imperial government) is to look after the people, and many ongoing events are expected to resolve gradually so that the people will feel safe and content. However, audacious gangs are running away in all directions. Trying to win fame using the emperor's name, they may trick good people, steal money and food, make people work hard, and exploit the strength of the people (*minryoku*), thus violating the imperial goal of looking after the people. Because those things are possible, if you have private problems, lodge your complaints with the imperial government without any hesitation, even if they may be antagonistic to its policy." (Here and elsewhere, translations are my own except when otherwise indicated.) The decree requests that local land administrators (*ryōshu* and *jitō*) refer such complaints to the imperial government. It also encourages people to complain directly to the imperial government, if "absurd customs" (*rōshū*) make it difficult for them to complain to their

of speech and a ban on free movement. The duality again reflects the Meiji leaders' radicalism and their simultaneous need to maintain social order.

At the same time, the duality reflects their political awareness that they need to win support to legitimise their rule, as well as their private difficulties in dealing with legitimacy. They are leaders of their own domains who have organised lower-class samurai and even farmers to challenge the Tokugawa authority. They know the power of "the masses", since they have exploited it for their revolutionary cause. Hence Article 3 of the Charter Oath gestures at participation by asserting that "civil and military officials as well as the common people shall achieve their aims, and thus the people's minds shall not grow weary".

Yet their attitude towards the people is ambiguous, and their encouragement of free speech is far from complete. So in the following month a censorship decree appears which makes official permission necessary for book publication.<sup>26</sup> Censorship of newspapers follows almost immediately.<sup>27</sup> Hence the Restoration has the familiar despotic character of revolution: forced change is accompanied by assertive authority.<sup>28</sup>

Nevertheless egalitarianism was a key characteristic of the Meiji provisional government. In the early Meiji period state and society are often interchangeable concepts. Both represent an ideal community, independent externally and united internally. Yet in both, the people form an indispensable part. This new vision of society, with the Charter Oath stressing national unity based on individual commitment, suggested that all were "equal" under the emperor's leadership in the country's striving for modernisation. And this emphasis on a new public went beyond rhetoric, as the new government removed various status regulations that had been the linchpin of the Tokugawa regime. Thus the abolition of the domain system in 1871 was preceded by a

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immediate landlords. The decree also includes a ban on passing post-station towns on main transportation routes without an official pass.

<sup>26</sup> Decree No. 358 (28 Intercalary April) in *Hôrei Zensho* (1868).

<sup>27</sup> Decree No. 451 (8 June) in *Hôrei Zensho* (1868).

<sup>28</sup> Discussing the French Revolution, de Tocqueville points out the similarity between the way in which power was exercised by the French revolutionaries and the ancien regime. He attempts to find the continuity between the two in the idea of *droit administratif*. Dicey also sees the origin of administrative law in Napoleon's effort to combine the two elements, revolutionary and conservative. See Dicey, *op. cit.*, pp. 335-8.



decree to abolish the titles “*kugyô*” (court nobles) and “*shokô*” (*han* lords) on 14 June, 1869, and by a decree to abolish the titles “*tai, fu, shi*” (assigned to various ranks of samurai) on 2 December 1869. This in turn was followed by a decree to abolish the status of *eta* and *himin* (outcasts) on 28 August 1871. The classification between former samurai and commoners remained in the *koseki* (household registers) system introduced in 1871,<sup>29</sup> but they were now allowed to intermarry.

The removal of these barriers was not, of course, purely ideological. A centralised government required a tax-paying people, and a people who would accept national conscription. Obstacles to commercial activities had also to be removed. Households, not individuals, would replace the rigid status system as the basic unit for administration. Nevertheless, an emphasis on egalitarianism, together with internationalism, was the undercurrent of Japan’s modernisation.<sup>30</sup>

Each egalitarian measure met resistance, and the Meiji leaders had to rely on the emperor’s newly acquired authority. They had other advantages as well, such as a monopoly of technology and the ability to assemble capable personnel, so as to consolidate their power.<sup>31</sup> Yet it was this emphasis on equality and their own assertion of fairness that legitimised their government. Discrimination remained, but the idea of an equal society transformed Japan and unleashed a more mobile society, nurturing such grass-roots activities as the Jiyûminken Undô in various parts of the country.<sup>32</sup> The three “dissenters” I discuss later are all a product of this newly mobile society. Thus the emphasis on egalitarianism is one reason why in its early years the Meiji State as a political structure was never fundamentally challenged, despite its institutional problems as seen in the Constitution. Even opposition to government constantly returned to the Charter Oath. Future governments would be criticised for betraying the promises made by the Restoration ideals.

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<sup>29</sup> The classification was abolished in 1914.

<sup>30</sup> Egalitarianism was also promoted by such intellectuals as Fukuzawa Yukichi. The first volume of his *Gakumon no Susume* became a best-seller in 1872.

<sup>31</sup> The government’s successful monopoly of technology is seen in the Saga Rebellion of 1874. See John R. Black, *Young Japan: Yokohama and Yedo 1858-79*, vol. 2 (London: Oxford University Press, printed in Tokyo, 1968), pp. 415-16. The original edition was printed in 1883 by Baker, Pratt & Company.

<sup>32</sup> The Jiyûminken Undô in the western part of Tokyo is vividly documented by Irokawa Daikichi, *Shinpen Meiji Seishinshi* (Tokyo: Chûô Kôronsha, 1973).

However there was always a potential tension in government policy. Political leaders were aware that they needed to win public support in order to legitimise their rule. At the same time they had to suppress opposition. Their seemingly self-contradictory aim is especially discernible in the introduction of various press laws and other laws to restrict public meetings, and it is to these less open aspects of government that I will now turn.

### **1.3. Extension of discretionary powers: press and assembly laws**

The tension between national unity and free government in post-Restoration Japan is nowhere more apparent than in the many measures introduced in order to regulate freedom of the press and assembly. Indeed such regulations played a central role in the “administration” of the people by successive governments in pre-war Japan. The origin of those regulations was already present from the outset, as seen in the Five Board Notices. Yet as Japanese society became more pluralistic, the task of incorporating the people into the political system while containing dissent became more complex and strenuous.

This section aims at demonstrating how successive governments used various regulations in order to quell their political opponents. When dissent became more vocal, the language in these regulations became more inclusive, thus more discretionary. The regulations were always reactionary, however, and were targeted at people who those in government saw as a major threat to their rule. At first they were designed to quell *jiyûminken* activists seeking popular rights. But when Japanese society became more “industrialised”, the primary targets became labour and tenant activists and socialists. Yet even these regulations could not stifle the emergence of a pluralistic society entirely. For they acknowledged the emergence of a “civil” society even as they were driven to increased use of arbitrary executive power. At the same time the evolution of these regulations from those targeting individual opponents to those designed to prevent and

contain any potential opposition reveals the inner trajectory of the Japanese state, from an authority fragile at the outset to an authority increasingly able to curb and define individual activity.

For the newly assembled government, the need to create national unity required a mechanism for disseminating policy across the community. Thus it introduced its official gazette on 20 February 1868. A decree issued shortly after described its aim as the dissemination of the government's goals and intentions "throughout society", including isolated rural communities and people both high and low.<sup>33</sup>

Yet information detrimental to government policy must be controlled. Thus a censorship decree appeared in Intercalary 28 April 1868, which made official permission necessary for book publication. Newspaper censorship, as we have seen, quickly followed.

Hence the need to create a new national community coincided with the need to suppress opposition. This pattern, in which publication is "encouraged" while criticism of government policy is banned, is present in a number of subsequent regulations.

Representative is the first press ordinance introduced in 1869. Newspapers were then expected to play the role of a contemporary encyclopaedia, disseminating technology and new ideas. Their publication was encouraged, although prior permission was required. An article in the 1869 regulations says: "Natural disasters, prices, policy and regulations, military affairs, fires, marriages, births and deaths, arts, banquets, clothing, food, various government notices, translations from Western books, and events abroad. Everything, which is not injurious to society, should be reported."<sup>34</sup> At the same time, opposition must be discouraged. Thus, "policy and regulations" in the article is followed by a parenthesised ban on "flippant criticism". "Military affairs" has a parenthesised warning that the publisher will be punished if the newspaper carries wrong information and has not corrected it.

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<sup>33</sup> Decree 217, issued on 5 April 1868.

<sup>34</sup> The press regulations and the regulations on the freedom of assembly issued by the Meiji government between 1867 and 1890 and quoted in this section are included in Matsumoto Sannosuke and Yamamuro Shinji (eds.), *Genron to Media, Nihon Kindai Shisô Taikei*, vol. 11 (Tokyo: Iwanami Shoten, 1990), pp. 403-50. The pre-war criminal and civil codes, the Peace Police Law, and other laws quoted in this section are included in Wagatsuma Sakae (ed.), *Kyûhôreishû* (Tokyo: Yûhikaku, 1968).



Nevertheless the government actively promoted the publication of newspapers. The *Yokohama Mainichi Shinbun*, which is considered to be the first modern-format daily published in Japan, was published in 1870 with the support of the then governor of Kanagawa Prefecture. The government also bought copies of the newly launched newspapers to distribute them across the country.<sup>35</sup>

This delicate balance between the need for publicity and the need for control is also discernible in the *shinbunshi jôrei*, new press regulations introduced in 1871. These encouraged the publication of newspapers as a means to enlighten the people. One article advises that newspaper articles should not be written casually and without factual evidence, but also should not be too difficult and formal to be understood by ordinary readers. At the same time separate articles ban criticising government policy and regulations, and disseminating heresies (*isetsu*) that may confuse the people.

Full control of the media is clearly not possible, unless there is only one newspaper which is a government gazette. Plurality of newspapers means diversity of opinion. Thus from about 1873 on newspapers began to discuss politics more critically.<sup>36</sup>

In that same year the encouragement of publication remains present in new regulations issued on 9 October. Article 7 of these regulations ensures that newspapers can carry articles about any subject unless it is injurious to society. Yet regulations intended to ban criticism increase. Now the concept of the state (*kokka*) is crucial for the government to defend its policy against its critics. Thus Article 12 says: “Newspapers should not discredit national polity (*kokutai*), criticise principles of the nation (*kokuritsu*), and advocate laws of other countries so that enforcement of the laws of the nation (*kokuhô*) will not be hampered.” The article reiterates the concept of the state in

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<sup>35</sup> For a brief history of the mass media in the Meiji period, see Matsumoto Sannosuke, “Shinbun no Tanjô to Seiron no Kôzô [The Birth of Newspapers and Structure of Political Debate (in Meiji Japan)]”, *Genron to Media*, pp. 452-76.

<sup>36</sup> The *Nisshin Shinjishi*, which was published from 1872 to 1875, carried an opinion by *Jiyûminken* activists calling for the introduction of parliament on 18 January 1873. Katô Hiroyuki’s opposition to the opinion appeared in the same newspaper on 3 February. Both camps exchanged opinions in the paper several times. Their articles are reprinted in Tôyama Shigeki and Satô Shigerô (eds.), *Jiyûtôshi*, vol.1 (Tokyo: Iwanami Shoten, 1957, reprinted in 1997), pp. 89-93, 97-119. The original edition of *Jiyûtôshi* was edited by Itagaki Taisuke, founder of the party, and published in 1910.

newly institutional terms in order to label criticism of government unpatriotic and treasonable. Government leaders still feel their authority fragile, and resort to ideological persuasion and the language of coercion.

The fragile co-habitation of a free press and state control was severely damaged when the Jiyûminken Undô became a real threat to the government. The Meiji government had already been in serious disarray, and after Itagaki Taisuke and other leaders left the government in 1873 over the Seikanron dispute, Kido Takayoshi, another major figure in the original formation, left office in 1874 in protest at the government's decision to send troops to Taiwan. In 1875, they were persuaded to return to the government. Yet a serious rift remained, this time between Kido and Itagaki about the timing of introducing Parliament.

Behind Itagaki, there were growing grass-roots calls for prompt introduction of Parliament. In response the government issued an imperial rescript in April 1875, promising that Parliament would be introduced in the future. This promise encouraged the Jiyûminken Undô further. While Itagaki, Kido and other government leaders were debating about a future plan, the *Jijosha*, an association advocating Parliament's introduction, circulated a petition urging the government to introduce a fully popular government. Some local bureaucrats also supported the group's plan at their meeting organised by the government (*chihôkan kaigi*) in June. Alarmed by the growing support for the Jiyûminken Undô, the government pushed through two new regulations intended to quell their voices, an ordinance against slander (*zanbô-ritsu*) and new press regulations (*shinbunshi jôrei*), later in the month.

The *zanbô-ritsu* and the *shinbunshi jôrei* were both issued by the Dajôkan, the central administrative body that existed between 1868 and 1885. A mere rhetorical ban on criticism of government policy in the previous regulations was now replaced by concrete forms of punishment under the *shinbunshi jôrei*. Thus the new regulations allowed the government to impose imprisonment and fines on those whose articles "are intended to induce others to commit crimes, incite a riot and intimidate government officials" (Article 12). Similar sanctions were levied against those who "support a fall of the government or the destruction of the state" (Article 13), or who "slander

administrative laws (*seihô*) and violate the principle of the people's obligation to obey law" (Article 14). Of these articles, Article 14 seems most relevant to discretionary power, since it makes criticism of *seihô*, regulations made by government, a punishable offence.

Because their aim was to quell immediate opposition, the *shinbunshi jôrei* banned newspapers from carrying petitions to the government without permission from relevant ministries. The disclosure of confidential government documents, minutes of closed-door meetings, and military information was already banned. But this new ban on the publication of private requests to the government seriously undermined the role of newspapers as the major channel for debate between government and the people. And the ban was preserved in subsequent press regulations, including the Press Law (*Shinbunshi Hô*) of 1909.<sup>37</sup>

Active publication in pre-war Japan, however, both in newspapers and books, shows that the media were still capable of promoting individual opinion, despite those restrictive measures. Yet the loss of publicity for petitions severely tilted the relationship between government and the people in favour of the former. By contrast the government's promise to open parliament in 1875 was a direct response to a petition which was signed by several prominent people, including Itagaki, and appeared in a newspaper. With the new ban, similar exchanges between government and people became difficult. Newspapers could no longer offer a venue where government and people could discuss a policy on equal terms.<sup>38</sup>

In the following year, as Jiyûminken Undô increased in force, the government took a major step to suppress opposition. To punish those who had written critical articles was now not enough. It issued a one-sentence ordinance allowing the Home Affairs Ministry to terminate the publication of newspapers if they were deemed to harm

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<sup>37</sup> Article 20 of the Press Law.

<sup>38</sup> In parallel with the *zanbô-ritsu* and the *shinbunshi jôrei*, restrictions on public servants discussing politics in newspapers and magazines were reinforced in 1875. A similar ban had existed since 1873. Yet the preceding regulations specified the areas that government workers should not discuss in the media: their immediate work and issues that would hamper diplomatic affairs. The new regulations adopt more inclusive language, saying that government workers should not discuss administrative and political affairs, except those reported in the Government Gazette. The ban, "*kanri no seimu kiji keisai kinshi tatsu*", is reprinted in *Genron to Media*, p. 415.

the safety of the nation (*kokuan*).<sup>39</sup> Thus by 1876 the prototype of the draconian press regulations of pre-war Japan was already in place.

Yet changes made to the press regulations in 1883 transformed the outlook and contents of the press regulations even further. Revised *shinbunshi jôrei*, which incorporated the one-sentence 1876 ordinance, reflected the growing confidence of those in government. Furthermore the legal system was now almost established, after the introduction of the criminal code in 1880. Now a Home Affairs Minister, not the ministry, could terminate the publication of a newspaper. Article 14 states: “A Home Affairs Minister can ban or terminate the publication of a newspaper if it is found to contain information that damages public safety (*chian*) or upsets social mores (*fûzoku*).” Article 15 states: “Governors and other local administrative heads can order publishers to terminate their newspapers issued in the area under their jurisdiction if the papers are found carrying such information as mentioned in the preceding article. They should report the case to the Home Affairs Minister and wait for his instruction.” And Article 16 states: “After banning or terminating the publication of a newspaper, a Home Affairs Minister can confiscate the remaining copies, ban their sale, and confiscate their printing devices if the case is found serious.” Behind these articles is a government increasingly confident, one that has secured its administrative structure and confirmed its ideology. It is a government that has transformed itself from a cautious guardian of the media into a harsh oppressor of free opinion.

This new “legalisation” of the Japanese State is also reflected in more specific and formidable qualifications for publishers. Publishers now even have to pay guarantee money to the government before publishing a newspaper or journal. Only Japanese men aged 20 or older are allowed to publish, and those who are stripped of their “civil” rights (*kôken*) are banned altogether.

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<sup>39</sup> This ordinance was called “*kokuan bôgai hakkin fukoku* [ordinance to ban publications deemed to harm the safety of the nation]”, and was issued by the Dajôkan on 5 July 1876. The ordinance was issued because the *zanbô-ritsu* and the *shinbunshi jôrei* would not stop criticism of the government in the media, although many journalists were arrested under the regulations. See Okudaira Yasuhiro, “*Ken’etsu Seido*”, in Ukai Nobushige, Fukusama Masao, *et al.* (eds.), *Kôza Nihon Kindaihō Hattatsushi* series (hereafter KNKH), vol. 11 (Tokyo: Keisō Shobō, 1960), pp. 133-205. Okudaira asserts that this new power to terminate publication was the central means used by successive governments to police publication. The ordinance is also reprinted in *Genron to Media*, p. 415.

Such suppression of publication reflects the emergence of the authoritarian Meiji State supported by what would be later called *tennôsei* (imperial absolutism). Thus the 1883 regulations add a ban on discrediting the imperial family.<sup>40</sup> Article 36 stipulates that the government can confiscate printing devices owned by those publishers who are found violating the provisions of Chapter I of Part II of the criminal code. Part II is entitled “Serious and Minor Crimes Regarding the Public Weal (*kôeki*)”, and begins with a chapter about crimes against the imperial family. Those who “harm or try to harm” the emperor, his wife, and the wives of the preceding two emperors will receive the death penalty.<sup>41</sup> A blanket ban on *lèse-majesté* is thus introduced without clear definition of what acts constitute the crime. In the new scheme of things the emperor represents a “public”. And this “public” entails new divisions of society. Soldiers, the servants of the emperor, are exempt from punishment under the criminal code. Instead they are subjected to separate military laws.<sup>42</sup> Murder of a prisoner committed by a public servant will be treated as physical violence, not murder.<sup>43</sup> By labelling critical discussion of the imperial family a crime, the press regulations now became part of the emerging absolutism.

The *shinbunshi jôrei* was revised in 1909 to become the Press Law, which regulated the publication of newspapers until the end of World War II.<sup>44</sup> The law preserved most aspects of the discretionary powers accorded to a Home Affairs Minister by the previous regulations.

Women, however, could now openly publish a newspaper and a journal. Thus a group of women formed a literary association *Seitô* (Bluestocking) and began publishing a journal, also titled *Seitô* in 1911. This new tolerance obviously reflects a growing call

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<sup>40</sup> The heaviest penalty in the *zanbô-ritsu* is for slandering the emperor. The ordinance and the regulations created the impression that criticising the government was punishable for the same reason as criticising the emperor was punishable.

<sup>41</sup> *Taigyakuzai*, crimes against the emperor and other members of the imperial family, were passed into the criminal code revised in 1907 (Article 73 of the criminal code).

<sup>42</sup> Article 4 of Chapter I of Part I, General Rules, in the criminal code.

<sup>43</sup> Article 280. Thus public servants would escape from the death penalty for murdering prisoners. Yet Article 292 states that premeditated murder will always receive the death penalty.

<sup>44</sup> The *shinbunshi jôrei* was revised in 1887. In Articles 19 and 20, discretionary powers are accorded to a Home Affairs Minister to ban publications that he deems harmful for “public” order. See *Genron to Media*, pp. 421-5.

among women for wider political freedom. And also the Meiji Constitution had indeed guaranteed “liberty of speech, writing, publication, public meetings and association”, “within the limits of law” for all subjects of the country. On the other hand, the article excluded from publishing two groups whose obedience was crucial for the survival of the burgeoning Japanese Empire: soldiers, and people in the newly acquired territories. For Japan was about to annex Korea, after obtaining Taiwan in 1895. Whether or not domestic laws, including the Meiji Constitution, should be applied in those new territories remained controversial both within the government and among legal experts. Yet in those areas press freedom was not recognised. Military officers could not express their opinions in newspapers.

This situation of course is characteristic of the Japanese State and society during the Taishô period (1911–26), when Japan is commonly described as “liberal domestically and imperialistic externally”. Indeed during this period, various internal civil movements gained momentum, and various steps were taken to expand people’s political participation. Yet this expansion of “civil” liberties also coincided with the expansion of executive power which could be exercised when those in authority felt it necessary. Thus the Press Law of 1909 adds Article 42, which was not included in the previous press regulations, which says: “The publisher, the editor, and the printer who carries articles that discredit the imperial family and are intended to change government (*seitai*) or to abuse the rules of the nation (*chôken*) will be imprisoned for up to two years or fined up to 300 yen.” Acts that “discredit the imperial family” or “are intended to abuse the rules of the nation” are of course difficult to define. Such definitions are open-ended, and ambiguous. Their vagueness is harmless as long as the article is not invoked. Yet once it is invoked, vague and inclusive language can be effective in checking dissent.

Thus when Minobe Tatsukichi was accused of discrediting the imperial family through his Emperor-as-Organ theory in 1935, the Publication Law, a sister law of the Press Law, was invoked. Under its Article 19, the Home Affairs Minister banned three of his major works. A complaint was filed against him for violation of *lèse-majesté*, and the Justice Ministry discussed whether to charge him for violation of Article 26 of the



Publication Law, which has exactly the same phrasing as Article 42 of the Press Law, except that articles are replaced by books and pictures, editor by author, and by slightly lighter punishment.<sup>45</sup>

At the turn of the century then the Japanese government was facing the persistent challenge of how to pursue “national” goals while containing political dissent. It had to recognise the demands of the people, and at the same time it needed their obedience. Increasing emphasis on imperial authority and “public” morality, as seen in the *Boshin Shôsho* of 1908, reflects the pressures felt by those running government. And their uneasiness is recognisable in the abundant use of discretionary powers in the 1909 Press Law. In that law, authority and individual are unable to meet, because as soon as individuals protest they become law-breakers.<sup>46</sup>

At the same time the regulations aimed at restricting public meetings and political association have the same origin and purpose as those of the press regulations: the enforcement of arbitrary power, characterised by ambiguous language, in order to define the illegality of private activities. Yet these regulations reflect the government’s fear, more clearly than the press regulations, that their opponents might unite to become one powerful force.

The origins of these regulations concerning public meetings and political associations may be traced back to the government’s order, issued for police personnel

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<sup>45</sup> Article 26 of the Publication Law of 1893 reads: “The author, the publisher and the printer who published a book or a picture that discredits the imperial family and is intended to change government (*seitai*) and abuse the rules of the nation (*kokken*) will be imprisoned no less than two months and up to two years or fined no less than 20 yen and up to 200 yen.” The ministry decided not to charge Minobe, since his books were already banned and he resigned from his official posts. See Miyazawa Toshiyoshi, *Tennô Kikansetsu*, vol.1 (Tokyo: Yûhikaku, 1970), pp. 241-6.

<sup>46</sup> The regulations on the publication of books were less stringent than the restrictions on newspapers, but according to the regulations in 1872, author and publisher still required a licence from the Education Ministry for book publication. This authority was shifted to the Home Affairs Ministry in 1875, when the *zanbô-ritsu* and the *shinbunshi jôrei* were introduced. But the initial licence requirement was changed to a post-publication check, although both methods would practically serve the same purpose for rejecting “unsuitable” books, for the state and society. Taking the same pattern as the 1883 press regulations, Article 15 of the *shuppan jôrei* introduced in 1887 stipulates that petitions submitted to the government are not allowed to be published unless permission from relevant ministries is granted. Article 16 says: “A Home Minister can ban the publication of a document or a picture that is deemed to harm *chian* (public safety) and damage *fûzoku* (social mores), and can confiscate the original and copies.” Article 25 also bans passages that encourage destruction of government and misuse the law of the state (*chôken*). The *shuppan*

in 1877, to monitor and stop anti-government activities. The order again reflects the government's concern about the growing Jiyûminken Undô movement. Thus "If he finds evidence that people have secretly gathered for forging conspiracy, or the speeches at a meeting are found harming the safety of the nation (*kokuan*), the policeman should stop the meeting and report the incident to his superior," the order says.

Such fear of any collective action echoes the Five Board Notices, and is passed into the *shûkai jôrei* in 1880. Thus the regulations ban one organisation from associating with another. Now associations or meetings intended to discuss politics (*seiji*) require police permission. Police can attend those meetings and order them to disband if they are deemed to harm the stability of the state (Article 4). Yet government itself cannot avoid sponsoring public meetings. Therefore the regulations exempt meetings organised by *seihô*, that is, *droit administratif* "laws" enacted by the government. Thus the character of a meeting is dependent upon which law is applied and by whom.

In the 1880 ordinance, the government identified political activities as its biggest threat, and banned the following groups from joining a political organisation or attending a political meeting: incumbent and reserve soldiers of the Army and the Navy, policemen, teachers and students, and trainees of agriculture and crafts. These people were supposed to support government, and therefore they should not be involved in any activity that would threaten its existence.

The *shûkai jôrei* was tightened in 1887, as the first opening of Parliament approached.<sup>47</sup> And then a new law restricting press freedom and freedom of assemblies was again introduced in 1890 simultaneously with the first general election. The term "the safety of the nation" (*kokuan*) of 1880 is changed to *annei chitsujo*, echoing the phrase used in the newly introduced Meiji Constitution. This and previous laws made it a norm to ban meetings or political associations suspected of harming *annei chitsujo*, both a priori or on-the-spot. Nevertheless, the government had to recognise the emergence of a more demanding public. This recognition is observable, for instance, in

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*jôrei* was revised to become the Publication Law (*Shuppan Hô*) in 1893. For the regulations on book publication introduced by the government between 1868 and 1887, see *Genron to Media*, pp. 425-35.

<sup>47</sup> As a result of this ordinance, about 570 *jyûminken* activists, including Ozaki Yukio, Hoshi Tôru, and Nakae Chômin, were forced to leave Tokyo.



their lifting a previous ban on out-door public meetings. A previous ban of contacting other groups to form bigger organisations is also dropped.

In 1900 the new law was amended to become the Peace Police Law, in response to perceived threats from socialists and labour and tenant activists. Its Article 17 singles out those groups.<sup>48</sup> Political organisations are banned if they are considered by the government as harming “the public peace” (*annei*) or “the public peace and order” (*annei chitsujo*). Yet Article 14 baldly states that any “secret” association is banned. Secrecy and individual autonomy are, of course, inseparable. The secrecy that allows free debate is the foundation for people to act together. The law thus further undermines the foundation of a communicable society.

Such consistent resorting to discretionary power and convenient ambiguity of language reflect the insecure legitimacy of Japanese government authority and the absence of a system to solve “social problems”. The government was insecure because it was not based on genuine popular support. The introduction of a parliamentary system in 1890 was seriously inadequate, since the eligible voting population was extremely small due to strict asset-based requirements. The insecurity of legitimacy and the absence of a viable system to accommodate the demands of the masses required the government to rely on “the emperor”, “the law”, the police, and even the military to enforce its policy. By aligning politics with anti-government and anti-social activity, the Peace Police Law further deprives the people of the chance to discuss its own collective life.

Nevertheless even the Peace Police Law mixes tolerance and control. The law for the first time allows those opposed to a Home Minister’s decision banning their

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<sup>48</sup> Article 17 reads: “(1) It is banned to use violence against, threaten, or publicly slander others for the following purposes 1, 2, and 3, and to entice or mobilise them for purpose 2.

1. To force them to join a group aimed at taking joint action over working conditions and pay, or prevent them from joining such a group.
2. To sack workers or reject their offer to work in order to lay them off en masse, or to prevent other workers from accepting an offer of employment in order to stage a strike.
3. To force the employer or workers to accept working conditions and pay.

(2) Landlords and tenants are banned from using violence against, threatening, or publicly slandering each other to force the other to accept conditions over tenancy of the property.” See *Kyûhôreishû*, pp. 60-1. Article 17 was dropped when the law was revised in 1912.

association to lodge a complaint with an administrative court.<sup>49</sup> Subsequent oppression under the law proves such a safeguard illusory. Yet the law gestures at constitutional government. Also the law relaxes a ban on specific groups of people from attending a public meeting.<sup>50</sup> Thus oppression and “liberalism” coexisted even in the law. That was possible because of discretionary notions of political authority: a convenient fluidity of language and entrenched authority had again combined to define the illegality of “private” activity. Thus the Peace Police Law accords almost limitless power to the police and to the Home Affairs Ministry in the banning of “political” activities. These and other laws laid the groundwork for the tighter controls of the future, when those in power felt it even more necessary to oppose dissenting opinion.

#### **1.4. The Meiji Constitution: imperial absolutism and constitutional government**

The divided alignments of post-Restoration Japanese politics are especially apparent in the Meiji Constitution. Lorenz von Stein, one of the German advisors to the government’s constitutional writers, described the newly introduced Constitution as “a unique mixture of [theocratic] monarchism and [representative] democracy”.<sup>51</sup> Thus the law of the state was promulgated by the emperor by “virtue of the supreme power” that he inherited from his ancestors. He was the head of the Army and Navy, as well as the state bureaucracy, and the right to initiate revision of the Constitution belonged only to him. Parliament would not be allowed to “interfere” in matters of the imperial family,

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<sup>49</sup> Article 8. See *ibid.*, p. 60. However, the Press Law of 1909, and the Publication Law of 1893 and its revision of 1934 do not include an equivalent provision. See *ibid.*, pp. 65-6.

<sup>50</sup> Restrictions on the formation of political associations remained tight in the Peace Police Law. Thus, Article 5 bans the following people from joining a political association: incumbent and reserve soldiers of the Army and the Navy, policemen, Shinto priests, monks and other religious practitioners, teachers and students of public and private schools, women, minors, and those whose civil rights are suspended (see *Kyûhôreishû*, pp. 60-1). Women had been banned from joining a political organisation or attending a political meeting since 1890, when the *shûkai jôrei* was revised. The Peace Preservation Law imposed a similar ban on Shinto priests and monks.

<sup>51</sup> Quoted by Inada Masatsugu, *Meiji Kenpô Seiritsushi*, vol. 2 (Tokyo: Yûhikaku, 1962), p. 954.

and amendment of the Imperial House Law would not require parliamentary assent.<sup>52</sup> At the same time the emperor exercised the rights of sovereignty “according to the provisions of the present Constitution”. Therefore “Every law requires the consent of the imperial Diet”. And the emperor promises to “respect and protect the security of the rights and of the property” of the people, and to “secure to them the complete enjoyment of the same within the extent of the provisions of the present Constitution and of the law”. Stein saw the Constitution as a skilfully crafted compromise between imperial absolutism and representative government.

The Constitution however leaves open the question of whose decision is more authoritative. Hence the ambiguous division of authority is embodied in the parallel presence of imperial ordinance (*chokurei*) and law (*hō*). *Chokurei* is applied to *taiken*, executive power. *Chokurei* is issued in the name of the emperor, and its legitimacy is based on “emergency” situations. The Meiji Constitution contains a number of articles endorsing the use of *chokurei* as an urgent measure, including Articles 8 (emergency ordinances), 9 (police ordinances), 10 (the autonomy of the bureaucracy), 11 and 12 (autonomy of the military), and 14 (the law of siege).<sup>53</sup> On the other hand, *hō* requires Parliament’s sanction to be valid. Thus the *hō* structure ensures parliamentary politics. *Hō* appears most frequently in the chapters the “Rights and Duties of Subjects” and “The Judicature”.

*Chokurei* and *hō* rarely appear together in an article, except in Articles 8 and 9. Yet when the articles containing *chokurei* and *hō* are collated, there emerges a blurring of the real centre of power.

Thus Article 8 allows the emperor to issue emergency ordinances to “maintain public safety or to avert public calamities” when Parliament is not sitting. Article 9 gives

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<sup>52</sup> *Kokkai* (the Japanese national assembly) is normally translated the Diet in English based on the official translation of the Meiji Constitution. However, Parliament, not the Diet, will be used throughout the text for semantic clarity, unless I am quoting official documents.

<sup>53</sup> Article 14: “The emperor proclaims the law of siege. The conditions and effect of the law of siege shall be determined by law.” Yet like many other articles, this article is unclear regarding the conditions in which the law of siege can be invoked. A particular omission is the role of Parliament. In fact, no law was enacted by Parliament to determine “the conditions and effect of the law of siege”. Instead, the regulations for dealing with *kaigenrei* (martial law), which were issued by the Dajōkan in 1882, were

the emperor police ordinance power “for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects”. The two articles themselves are susceptible to abuse, because they leave unclear the conditions under which such ordinances can be issued.<sup>54</sup> Yet at least they stipulate that imperial ordinances are subject to law. Thus Article 8 requires the government to seek Parliament’s consent in the next parliamentary session, and Article 9 confirms that no ordinance can alter the existing laws.

However, the Constitution undermines such already fragile assurance of the superiority of law to imperial ordinances in other articles. Article 31 specifically says that civil rights guaranteed by the Constitution and *hō* can be overridden by *taiken* in the case of emergency. The article, which is included in Chapter II, the “Rights and Duties of Subjects”, says: “The provisions contained in the present Chapter shall not affect the exercise of the powers appertaining to the emperor in times of war or in cases of a national emergency.” The Constitution therefore not only separates *hō* from *chokurei*, but also allows the latter to undermine the former.

This contest between *chokurei* and *hō*, between imperial executive power and representative government, continued throughout Japan’s pre-war history. For example in 1897, when party politics was strengthening, Parliament revised the Press Law to eliminate a Home Affairs Minister’s right to ban publications deemed injurious to society. But the provision was restored not by Parliament but by the government through the issuance of an imperial ordinance in 1905 in the wake of the Hibiya Riots of that year. The Constitution also stipulates that the conditions and effect of siege be determined by law. But no law was ever enacted for this purpose. Instead the law of siege was proclaimed as an administrative order during the Hibiya Riots, the Kanto Earthquake of 1923, and the February 26<sup>th</sup> Incident of 1936, allowing police to ban public meetings and publications deemed injurious to the situation (*jisei*). Okudaira

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maintained. Thus the law of siege was issued as an administrative order during the Hibiya Riots (1905), the Great Kanto Earthquake (1923), and the February 26<sup>th</sup> Incident (1936) for the Tokyo metropolitan area.

<sup>54</sup> Tomio Nakano indicates how such undefined powers heighten the power that may be exercised in the emperor’s name. Thus, “the powers which are not limited in their manner of exercise by the Constitution may be exercised by the emperor in any manner he pleases” (Nakano, *The Ordinance Power of the Japanese Emperor*, Baltimore: The Johns Hopkins Press, 1923, p. 5).

Yasunori asserts that the frequent invocation of *chokurei* without parliamentary sanction was a major reason why freedoms of speech and publication were so severely hampered in pre-war Japan. "If the executive power is so elastic and discretionary, individual freedoms are difficult to foster."<sup>55</sup> Thriving therefore on arbitrary declarations of emergency, and with the Constitution its fertile ground, the ubiquitous presence of *chokurei* undermined both the sovereignty of Parliament and legal equality, the Constitution's form and substance.

Thus the contest between *chokurei* and *hō* mirrors yet transcends such confrontations between government and its opponents as the conflict between *kokken* (statism) and *minken* (rights of the people) during the Jiyūminken Undō movement, and between *kokutai* (national polity, and fundamental character of Japan) and *goken* (protection of the Constitution) during the Taishō liberal period.<sup>56</sup> The "unique mixture" of absolute imperialism and representative government was in fact an impasse of non-accommodation.

The contest between executive power and free government is most obvious in two aspects of the Constitution, the separation between Parliament and Cabinet, and the inadequate constitutional guarantees of legal equality. Both aspects reflect the intentions of the original writers.

The initial drafts of the Constitution were written mainly by Itō Hirobumi, Inoue Kowashi, Itō Miyoji and Kaneko Kentarō between 1886 and 1888. The Sūmitsuin council started to discuss the draft in June 1888.<sup>57</sup>

Previous studies show that the writers of the Constitution had studied the constitutions of various European countries, particularly the Prussian Constitution of 1850.<sup>58</sup> Itō Hirobumi, Itō Miyoji and other government officials visited Germany and

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<sup>55</sup> Okudaira Yasuhiro, "Ken'etsu Seido", in KNKH, vol. 11, 1967, p. 149.

<sup>56</sup> The debate between Minobe Tatsukichi and Uesugi Shinkichi in 1912 was also about which has greater authority, the emperor's *taiken* or law enacted by Parliament.

<sup>57</sup> Many constitutional scholars believe that the first stage was crucial. Thus, Kojima Kazushi says that the fundamental character of the Meiji Constitution had been determined by the four people, and the role of the Sūmitsuin was "fine-tuning". See Kojima, "Meiji Kenpō Kisō Katei no Shiryōteki Kenkyū", *Nihon Gakushūin Kiyō*, vol. 15, no. 3, 1957, pp. 271-99.

<sup>58</sup> According to Inada, European constitutions that influenced the writers of the Meiji Constitution are those of Prussia (1850), Bavaria (1818), Württemberg (1819), Austria (1867), Saxony (1831), Baden



other European countries between March 1882 and August 1883 to discuss the envisaged Constitution with legal experts. German scholars such as Rudolf von Gneist, Albert Mosse and Stein were key advisors. Hermann Roesler, a German legal advisor who lived in Japan from 1878 to 1889, also wrote a draft in 1887, which is believed to have influenced the final draft before it was submitted to the Sûmitsuin council. Nevertheless by dint of much editing and revising, the Meiji Constitution as a Japanese text became “indigenous”.

*Taiken* appears three times in it, and is rendered by an ambiguous phrase, “the powers appertaining to the emperor” (Articles 17, 31, and 67), in the official translation. It appears once in the preamble and is translated as “the rights” of sovereignty of the State.<sup>59</sup> *Taiken* cannot be divided because it “resides” in the emperor. Yet the writers had to combine *taiken* with the constitutional principle that the emperor has to obey the law to which he gives sanction.

*Taiken* and the constitutional principle were therefore combined through their interpretation of representation. Constitutional government as envisaged in the Constitution is not parliamentary government, but “representative” government, in which representatives exercise *taiken* on behalf of the emperor. Thus Article 55 defines state ministers as representatives of the emperor, not of Parliament or of people. Itô Miyoji explains:

There are two types of constitutional government, parliamentary and representative. In representative government, equilibrium of government is maintained by the monarch (*kunshu*), and in parliamentary government by representatives (of Parliament). The Meiji Constitution endorses representative government, but not parliamentary government. Therefore, all *taiken* belong to the

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(1818), as well as English, French, Dutch, Belgian, Italian, Spanish, Portuguese, Danish, and Swedish models. Among them the Prussian Constitution’s influence is most prominent. Articles 8 and 31 were influenced by the Prussian and Austrian Constitution. At the same time Inada asserts that Japanese classics such as *Kojiki*, *Nihonshoki*, *Dai Nihonshi*, and *Nihon Seiki* also influenced the writers. Echoing Stein’s description, Inada concludes that the Meiji Constitution was written based on the “*kokutai*” concept and Inoue’s theocratic concept of political authority and at the same time was influenced by those European constitutions. See Inada, *op. cit.*, vol. 2, pp. 889-912.

<sup>59</sup> Itô Miyoji uses *taiken* for two different English phrases, sovereign rights and monarchical power, in his “Dai Nippon Teikoku Kenpô Engi”, which is reprinted in Emura Eiichi (ed.), *Kenpô Kosô*, pp. 348, 350.



emperor, except cases stipulated in the Constitution, and every matter will be determined by imperial decision (*chokusai*).<sup>60</sup>

However once proxies have been brought in to exercise *taiken*, the emperor is exempt from any political responsibility. Thus the Constitution spares the emperor from any constitutional obligations to Parliament. Itô Miyoji in this regard explained the deliberate divergence of the Constitution from European models. “In Prussia and other German states,” he says, “a monarch cannot enforce ordinances unless he has made a constitutional oath [to Parliament]. The Meiji Constitution rejects such provisions.”<sup>61</sup> He also says that “in constitutional government, the respective Ministers of State shall give their advice to the emperor and be responsible for running government. Only if such policy is ensured, can the public weal and the emperor’s personal *irresponsibility* be preserved”.<sup>62</sup> Thus, in effect, the Meiji Constitution countenanced supreme political authority with little or no accountability. For theoretically no institution could check or stop executive power exercised in the name of the emperor, because it was detached from constitutional restraints through “representation”, and also by the absence of any constitutional oath. The defect of this construction is the opportunity it provides for the creation of discretionary powers.<sup>63</sup>

Nevertheless the role of the people was at the heart of the debate about a form of constitutional government both before and after the promulgation of the Constitution in 1889. Contrasting views are most apparent in the debate in 1881 between Ôkuma Shigenobu and Inoue Kowashi as to whether to choose the British “king in Parliament” practice or the Prussian emphasis on the monarchy’s political role as the head of the

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<sup>60</sup> *ibid.*, p. 348.

<sup>61</sup> *ibid.*, p. 350. Emphasis added by the author. Itô also said, “...in Belgium a future king must declare before the two houses of Parliament that he will protect the Constitution, laws and the independence of the people. The Prussian constitution also includes a provision to that effect. It is only then that ordinances issued by the king will be considered valid.”

<sup>62</sup> *ibid.*, p. 354. A more accurate translation for the Japanese word “*funinseki-ken*” would be non-responsibility. Yet, irresponsibility was Itô’s own choice, as the kana letters for the English word were added next to the Japanese in the original text.

<sup>63</sup> The definition of discretionary powers here differs from that of Dicey, which I summarise as executive power exercised without a legal check. In Dicey’s definition, “legal” refers to both courts and Parliament. The definition here emphasises Parliament, since the courts had much less power in Japan than in Britain in examining the “illegality” of government action.

executive power. Many constitutional historians regard this event as the most decisive moment in shaping the Meiji Constitution. And the basic framework of the Constitution is already apparent in the arguments. Thus, if we compare Ôkuma's and Inoue's opinions, the genesis of the Constitution, and the conflicts it implies and anticipates, become clear.

Thus Ôkuma asserts that a prerequisite for good government is to respect the people's will (*kokujin no yôbô*), and that parliament is necessary in order to realise it. He sees the source of social stability and strength in the people's acceptance of their government and asserts that good government needs their mandate. In this sense, Ôkuma is a loyal successor of the Meiji ideals that emphasise the combination of national strength and the enlightenment of the individual. But what sets Ôkuma apart are his ideas about the relationship between authority and the people. For him a balance can be achieved only when the people accept government, and he endorses active interchange between the two.

Thus Ôkuma insists not only on Parliament but also on accountable government. He proposes to divide government employees into two groups, professional administrators and politicians. The latter will be replaced by the people if they fail to perform satisfactorily. Ôkuma supports "continuous" changes of government responsive to public opinion.<sup>64</sup>

Yet this mere assertion of British style parliamentary politics was not acceptable to other Meiji leaders. They feared the imperial government was still unstable and that government could not afford to "change".<sup>65</sup>

Thus if Parliament was to be introduced, any mechanism that would threaten the stability of government had to be eliminated. A Cabinet was the first and most obvious

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<sup>64</sup> Asai Kiyoshi says that this claim most alarmed other government leaders and resulted in Ôkuma's dismissal from the government. See Asai, *op. cit.*, pp. 201-6.

<sup>65</sup> Iwakura expresses their anxiety in the following passage: "Since the Restoration, imperial rule has not yet been fully disseminated among the people. Because of the abolition of the *han* domains (in 1871), the government remains the target of hatred. If the country now accepts the British party system and a government that can be replaced through a majority opinion in Parliament, it is very clear that those opposed to the government will try to win a parliamentary majority to take over the Cabinet. Some opinion leaders insist that smooth changes of a Cabinet will result in stability of the country. They are

casualty of their strategy.<sup>66</sup> The British style of joint responsibility in Cabinet was dropped because it would be more susceptible to opposition attack in Parliament, and also because it might lead to the emergence of a decision-making body responsible to Parliament as had happened in Britain. Thus all references to a Cabinet were expunged and state ministers became representatives of the emperor.

Such a structure was clearly fragile. Non-accountable power could be exercised by anyone or any institution in the name of the emperor. Articles 11 and 12 gave the Army and the Navy excuses to ignore decisions made by a civilian government. In 1907, the independence of military power was ensured with the issuance of *gunrei*, when the military and the civilian government were at loggerheads. Article 10, along with Article 7, gave bureaucrats significant autonomy since they were working directly under the emperor. Thus the Constitution created several autonomous authorities protected from checks and balances, because there was no constitutional directive on policy coordination. The powerful imperial executive power was in fact a collection of several powers, which were not accountable to anyone. In this way the Meiji Constitution became the creator of discretionary power distributed to the military, the bureaucrats and government. And in the early twentieth century the military and the bureaucrats began to issue their orders in the name of a nineteenth century imperial ordinance. Thus the ultimate irony of the Meiji Constitution is that the attempt of its authors to consolidate their own authority, led, in time, to the emergence of competing authorities, all unchecked, all bent on their own agendas. Such developments are one more element in the genesis of dissent.

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merely enchanted by the British system and ignore Japan's reality" (Iwakura Tomomi, "Iwakura Tomomi Kenpô Taikôryô", in *Kenpô Kôshô*, p. 227).

<sup>66</sup> When the four men wrote a draft in 1887, the draft (Natsushima-sôan) still mentioned the Cabinet's involvement in the exercise of the executive power. However, it was dropped in their 1888 draft (Nigatsusôan), apparently because they had accepted Inoue Kowashi's opinion. The elimination of articles regarding a Cabinet reflects his ideas about the emperor's authority and administrative power. In the preface to his Otsu-an draft (1887), Inoue objects to separating the prerogatives of the Cabinet and those of various administrative branches because he believes that they are all subject to the imperial prerogative (*taiken*). See Inada, *op. cit.*, vol. 2, p.69. For the Natsushima draft, see *ibid.*, pp. 198-205. The major drafts, including the Natsushima draft and the final draft by the four men, are found in Kokugakuin Daigaku Goin Bunko Kenkyûkai (ed.), *Goin Bunko Eiin Meiji Kôshitsu Tenpan Seitei Honshi* (Tokyo: Taisei Shuppan, 1986), pp. 575-94.

Legal equality, a key principle of constitutional government, is another casualty of the writers' attempt to eliminate any element that would upset government. Although it devotes its second chapter to the "Rights and Obligations of Subjects", the Meiji Constitution nowhere mentions legal equality. In this respect too the Japanese constitution departed from its European counterparts.

But the early drafts, written based on the European models, do include a passage referring to equality under law. For instance, Article 50 of the Natsushima draft says: "Japanese subjects receive equal protection of government and are equal before law, and may, according to qualifications determined in laws or ordinances, be appointed to civil or military offices equally, and may fill any other public offices." The article survived more or less in its original form until the four draftees agreed on the final draft that was submitted to the Sûmitsuin.<sup>67</sup> In that draft, and then in the Meiji Constitution, the article simply became: "Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military offices equally, and may fill any other public offices." Here, equality was no longer an unassailable principle, but was reduced to the assurance of "equal" opportunity for joining the state apparatus.

The elimination of any reference to legal equality (*hō no mae no byōdō*) reflects deep concern among the writers that the people should not be given too many rights.<sup>68</sup> The writers' uneasiness with the rights of the people is reflected in such equivocal expressions as "within the limits of law" and "*kōkyō*" (public). The Constitution recognises freedom of speech and assembly "within the limits of law".<sup>69</sup> Yet the role of

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<sup>67</sup> Inada speculates that the passage was dropped around 15 February 1888 when the four met (Inada, *op. cit.*, vol. 2., p. 397). The change was due to Inoue's suggestion. Inoue restricts the definition of equality to "no preferential treatment in protection and punishment, taxation, and appointment of office". "Equality under law does not mean the exploitation of the idea of equality in order to disturb social order and safety of property" (quoted by Inada, *ibid.*, p. 341).

<sup>68</sup> Thus Inoue opposed enumerating the people's rights, saying that constitutional emphasis on those rights are all dangerous and impractical, and excessive emphasis would help to keep alive "the spirit of the French Revolution", in the preface to his Otsu-an draft (see Inada, *ibid.*, p. 69).

<sup>69</sup> This expression is founded in a Japanese translation of the German "*nach Massgabe der Gesetze*" (as provided in law, or according to law) in the draft Herman Roesler wrote in 1887, and was passed to the subsequent drafts and the Meiji Constitution itself. Roesler's draft, Article 57: "Es besteht Freiheit der Meinungsäusserung, der Versammlungen und Vereine nach Massgabe der Gesetze." Japanese translation: "The freedoms of expressing one's thought and of meetings and assembly exist as provided by law." See Kojima Kazushi, "Roesleru Nihon Teikoku Kenpō Sōan ni tsuite", *Meiji Tenken Taisei no Seiritsu* (Tokyo: Bokutakusha, 1988), p. 27. Kojima points out that there are two translations for *nach Massgabe*

law is unclear for ensuring those rights.<sup>70</sup> Thus “*kôkyô*” (public) appears as in “*kôkyô no annei chitsujo*” (the public peace and order) in Article 9 of the Constitution. The original phrase is found in the Japanese translation of the German phrase “*die öffentliche Ordnung oder das Gemeinwohl*” (the public order or the well-being of the community) in the Roesler draft.<sup>71</sup> Yet the two concepts, public order and the commonweal, were fused into “public peace and order” in the Japanese expression, thereby erasing the idea of what was common or shared by people who were legally equal.<sup>72</sup>

Thus the Meiji Constitution, bending to the executive power, failed to ensure legal equality and a participatory community. Its ambiguous language reduced its ability to safeguard individual rights from executive excess. And along with the separation between Parliament and Cabinet, its inadequate guarantees of legal equality and individual rights posed serious handicaps for those who tried to realise constitutional government.

Nonetheless despite the dominance of executive power in the Constitution, parliamentary politics did begin to function. Already in 1898, less than ten years after the first general election, Japan’s first party-based Cabinet was established as a result of intensifying confrontation between government and Parliament. Despite their initial attempt to alienate parties from politics, Itô Hirobumi and other government leaders chose to form their own party in 1900, paving the way for the short-lived but full-fledged two-party system in pre-war Japan.

Such developments suggest that the idea of a parliamentary system was now fully understood by many Japanese.<sup>73</sup> And Dicey here relevantly asserts that many constitutional rules are in fact merely conventions, and that no statutory regulations are

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der Gesetze, “*hôritsu no han’i ni oite*” and “*hôritsu no han’inai ni oite*”. The former is in Itô Hirobumi’s version, and the latter in Itô Miyoji’s version. The difference between the two expressions is subtle, yet the latter is a slight mistranslation because of the emphasis on “*han’i*”. Because of the emphasis, the subsequent Japanese drafts and finally the Meiji Constitution all contained “*uchini*”, which means “within”.

<sup>70</sup> Thus, the task of defining the relationship between law and the rights of the individual was left to future generations of legal experts, including Minobe Tatsukichi, one of the subjects of this study.

<sup>71</sup> *ibid.*, pp. 26-7.

<sup>72</sup> The Japanese translation, “*ôyake no chitsujo arui wa kôkyô no annei*”, omits “*gemein*” (common, or general), as “*ôyake*” and “*kôkyô*” are synonymous.

<sup>73</sup> See Asai Kiyoshi, *op. cit.*

necessary for the operation of an assembly. The experience and knowledge that Japanese political leaders gained during the Jiyûminken Undô, both inside and outside government, and the debate preceding the Constitution together helped their understanding of how Parliament and party politics would work. And the Constitution brought in the idea of a “legal” state, however defective it may have been. Thus the Constitution was able to maintain constitutional process, so far as there was basic understanding of constitutional government among the people who used it. Yet once that understanding was ignored or forgotten, constitutional government had little defence against discretionary powers, which were also endorsed by it. The second half of Japan’s pre-war history shows how fragile a political system can be without an integrated mechanism of checks and balances, and shared understanding of how the system works.

### **1.5. The Consequences: the emergence of the ‘infallible state’ and the pressures of political extremism**

In the previous sections we have seen how discretionary powers were created in response to the tension between national unity and free government. Discretionary powers undermine free government, as Dicey claims. Yet more seriously, if national unity and free government are allowed to diverge unduly, then in principle and in practice, executive power can proceed unchecked. Thus the division between national unity and free government is highly relevant to the rise of the militant state in the 1930s. Two factors are relevant to this development: Japan’s emergence as an imperial power, and the institutionalisation of the “state” (*kokka*) with its attendant impact on extremist politics.

Thus in 1885, Fukuzawa Yukichi wrote a now famous article about Japan’s future. Loyal to the Meiji tradition of *bunmei kaika* (civilisation and progress), Fukuzawa advocated that Japan should strive even further to join the Western “civilised” camp, cutting off its historical and cultural ties with its Asian neighbours, China and



Korea. His assertion was in tune with the growing spirit of nationalism. This assertive nationalism, described as “*kokken-ron*” (statism) in contrast with “*minken-ron*” (practice of people’s rights), focuses on the expansion of national strength and prestige rather than on individual needs and freedoms. The “survival of the fittest” worldview, and the increasingly prosperous regional status of Japan, were behind the rise of this particular nationalism. There was a widespread perception that it was not with the West but with its neighbouring countries that Japan had to compete in order to make further progress. Fukuzawa’s essay appeared amid growing hostility towards China in the wake of the Kapsin coup in Korea in 1884.<sup>74</sup>

This statist nationalism is also a product of “coerced” modernisation. “Identity is perception”, says Liah Greenfeld in her examination of national identity.<sup>75</sup> Any national identity must be perceived and then endorsed by the population as a meaningful characteristic of the community. The early Meiji leaders were aware of the need to create such collective identity. That is why they resorted to “national” symbols, including the emperor. Indeed, as Carol Gluck demonstrates so fully, the inculcation of collective identity was “an affair of state”.<sup>76</sup>

The idea of external threat was found to be most effective in persuading the people to unite and to form a community. For the Japanese the state (*kokka*) represented this new community. Even after the Western threat had receded and their sense of achievement began to prevail, this collectivist national identity continued to dominate the minds of the political elite and then of ordinary people. Hence the “*Fukoku Kyôhei*” slogan: the country ought to be an economic and military power. Not all Japanese shared this view, but the sentiment intensified each time the country won a war.

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<sup>74</sup> By 1880, Japan’s international boundaries had been secured, following the expedition to Formosa in 1874, the signing of the Kanghwa treaty with Korea in 1875, and the annexation of the Ryûkyû Islands (the islands became one of the Japanese prefectures) in 1879. The initial threat of the West, both real or perceived, began to recede. Japan and China were competing over the hegemony of Korea. In 1884, the group led by Kim Ok Kyun who was seeking radical reform and independence from China staged a political coup (Kapsin political coup) with the support of the Japanese consulate, seizing the Palace. The revolt was quashed by the Palace army supported by Chinese troops. China and Japan mitigated their deteriorating bilateral relations by signing the Treaty of Tianjin (Tientsin) in the following year.

<sup>75</sup> Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge, Mass.: Harvard University Press, 1993), p. 13.

<sup>76</sup> Carol Gluck, *op. cit.*, p. 3.

Japan's first major war, the Sino-Japanese War of 1894–95, which many historians see as the start of Japan's imperialism, involved renewed emphasis on national unity.<sup>77</sup> This notion of collective destiny had enormous appeal because it was flattering, was about one's identity, and epitomised "progress". Jiyûminken Undô practically ended.<sup>78</sup> Parliamentary opposition also temporarily ceased. Japan's victory changed the meaning of *Fukoku Kyôhei* among government leaders. Now *Fukoku Kyôhei* came to mean national economic strength supported by the military. The military had now acquired a new *raison d'être*, in addition to constitutional backing.

Support for the country's expansion continued throughout pre-war Japan, even among opponents of government. And the nationalistic trend severely undermined free government. Those who advocated equality and individual freedoms had to face the criticism that they were damaging the national principle and were thus traitors to the state and society.

Thus the Taishô period, which is associated with a wide range of democratic movements, also coincides with Japan's imperial expansion. To possess a colony was considered by many as a legitimate act of a modern state. "Constitutionalism domestically, and imperialism internationally" was a common slogan for popular reform movements.<sup>79</sup> The fact that the government, backed by Kenseikai, a more liberal party than Seiyûkai, served the Twenty-one Demands to China in 1915 demonstrates the deep-rooted imperialism of the Japanese establishment. Even Kenseikai's platform included national expansion.

By now new generations of politicians had emerged, replacing the *genrô* (Meiji oligarchs). These included Hara Takashi, who in 1918 became the first prime minister to be chosen based on his party's strength in Parliament. He and his government pushed through arms reductions, signing the Washington Naval Limitation Treaty in 1922. And

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<sup>77</sup> See, for instance, W. G. Beasley, *Japanese Imperialism 1894-1945* (Oxford: Clarendon Press, 1987).

<sup>78</sup> Irokawa Daikichi says, "... The national unity movement (*kyokoku itchi*) in the wake of the Sino-Japanese War was a turning point, as the historical mission [of Jiyûminken Undô] as the promoter of grass-root democracy ended. At the same time, grass-roots nationalism gradually fused with collective statism, which became a major social awareness of the new imperialistic trend" (Irokawa, *Shinpen Meiji Seishinshi*, p. 457). Many contemporary opinion leaders, including Tokutomi Sohô, also turned nationalistic in the wake of the war.

<sup>79</sup> See Matsuo Takayoshi, *Taishô Demokurashî* (Tokyo: Iwanami Shoten, 1994), pp. 37-8.

his finance minister, Takahashi Korekiyo, advocated the abolition of the General Staff Office (*sanbô-honbu*) to curb the assertive military. Yet they could not abandon the idea that Japan had legitimate rights in expanding its power in Manchuria, an idea shared by members of the extreme right, including Kita Ikki.<sup>80</sup>

Such statist nationalism not only prevented politicians from envisaging a new policy to accommodate changing Japanese society and the growing anti-Japanese nationalism in China and Korea, but also left them exposed to the charge that they were risking the survival of the country and thus the well-being of the people. Thus, Hara and Takahashi were among several civilian politicians assassinated by fundamentalist nationalists, Hara in 1921, and Takahashi during the February 26<sup>th</sup> Incident in 1936. The motives of the assassin (or assassins) may have differed in each case, yet all those politicians had to confront the radical idealism prompted by notions of nation and people when they implemented what they saw as practical policy.

In such a climate, “liberal” politicians had to compromise. But compromise could facilitate the dissolution of constitutional government. Hence in 1925 the simultaneous endorsement of universal male suffrage and the Peace Preservation Law not only epitomised the familiar clash between collective goals and free government, but also anticipated the demise of civilian government.

Historians often describe the simultaneous endorsement of universal male suffrage and the Peace Preservation Law as a “carrot-and-stick” procedure, an unfortunate but inevitable manoeuvre on the part of a “liberal” government. Universal male suffrage had been realised only 35 years after Parliament had been introduced, enfranchising 20 percent of the entire population of the time.<sup>81</sup> This was a sign of the

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<sup>80</sup> Usui Katsumi, *Chûgoku o meguru Kindai Nihon no Gaikô* (Tokyo: Chikuma Shobô, 1983), p. 40.

<sup>81</sup> Japan took only 36 years to eliminate tax-based eligibility restrictions for men after the first general election in 1890. In comparison, universal suffrage (including women) was not introduced until 1918 in Britain after the major electoral reform in 1832. Only 12 percent of the population were eligible by 1886 after a series of electoral reforms in 1867 and 1884 in Britain. “None the less most countries failed to make the change until shortly before the First World War or just afterwards” (see, for instance, Andrew M. Carstairs, *A Short History of Electoral Systems in Western Europe*, London: George Allen and Unwin, 1980, and also the entry “franchise reform” in John Belchem and Richard Price (ed.), *A Dictionary of Nineteenth-Century History*, Harmondsworth: Penguin Books, 2001, pp. 229-30). Matsuo Takayoshi asserts that the relative promptness of introduction of universal male suffrage is “a reflection of Japan’s

government's recognition of the growing presence of the proletariat and of pro-democracy demands, although it strategically eliminated women, soldiers, "those poor who receive either public or private support," and those convicted of crimes, including crimes against the imperial family. On the other hand, the Peace Preservation Law merely increased the government's discretionary powers to suppress opposition. Although the word "*kokutai*" had been used in various imperial rescripts, including the Imperial Rescript on Education in 1890, the Peace Preservation Law was the first law to use the word to discredit political dissent.<sup>82</sup> The law was aimed at preventing the dissemination of communism and anarchism in the wake of the Russian Revolutions and the establishment of the Comintern in 1919. Yet the law became a powerful weapon to eliminate any kind of dissent, including that of liberals and academics, when in 1928 it was revised by imperial ordinance to include the death penalty.

Significantly, both bills were introduced under the coalition government led by Prime Minister Katô Takaaki. Katô headed Kensaikai, the party that proclaimed itself to be the legitimate successor of the Jiyûminken Undô movement and the "progressive" earlier Rikken Kaishinkai and Kensei Hontô. The party was the main critic of the House of Peers, which its members saw as an obstacle to Parliament's representation of "the people".

Universal suffrage and the Peace Preservation Law represented two ideologically different strands. Yet since 1920 the Home Affairs Ministry and the Justice Ministry had been trying to write a bill to police political thought in order to prevent revolutionary ideas from filtering into the country. The bill, Kageki Shakai Undô Torishimari Hôan [A Bill to Curb Radical Social Movements], was passed by the House of Peers after major amendment in February 1922, but was rejected by the House of Representatives because it felt the law oppressive. However a relevant regulation was successfully introduced in

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rapid modernisation and the rapid growth of the proletariat" (Matsuo, *Futsûsenkyo Seido Seiritsushi no Kenkyû*, Tokyo: Iwanami Shoten, 1989, p. 328.)

<sup>82</sup> Article 1 of the law reads: "Anyone who organises a group for the purpose of changing the national polity (*kokutai*) or of denying the private property system, or anyone who knowingly participates in said group, shall be sentenced to penal servitude or imprisonment not exceeding ten years. An offence actually carried out shall also be subject to punishment" (the translation is taken from David Lu, *Japan: A Documentary History*, New York: M.E. Sharpe, 1997, p. 397).

the form of “*chokurei*” in the wake of the Kanto Earthquake in 1923. This imperial ordinance stipulated that those who disturbed *annei chitsujo* (the public peace and order) would receive punishment of up to 10 years in prison. The House of Representatives, including Kenseikai, endorsed the imperial order in 1923 when the government sought Parliament’s endorsement retrospectively, as stipulated by Article 8.

Meanwhile Kenseitô had advocated universal suffrage while in opposition. Previous bills to introduce universal suffrage had been blocked repeatedly by the House of Peers. To ensure the passage of universal male suffrage, and the ratification of normalisation with the Soviet Union earlier in the year, the Katô government, which came to power in June 1924, had to compromise on the Peace Preservation Law.

The Peace Preservation Bill was “a long-pending piece of legislation, the passage of which was precipitated by Katô’s need to smooth the way for other measures”, according to one historian.<sup>83</sup> “In fact, the Katô government never had recourse to the law, but in more zealous hands, it became an instrument for repression. This was a lack of foresight on the part of the Kenseikai leadership, not an error of deliberate commission.”<sup>84</sup>

Yet the simultaneous passage of universal male suffrage and the Peace Preservation Law echoes the familiar pattern in which the expansion of popular political participation is checked by a new measure. It clearly confirms the failure of Japan’s transformation into a “civil society”. The law, which also made “denying the private property system” a punishable offence, pre-empted the formation of proletarian parties. It stifled parliamentarianism. Thus Matsuo Takayoshi says: “The proletarian and petit bourgeois were disappointed by a Parliament indifferent to their benefits, and smouldered with disgust for the corrupt, existing parties. The decline of party politics and the rise of the military [in the 1930s] can be traced back to the way in which male

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<sup>83</sup> Peter Duus, *Party Rivalry and Political Change in Taisho Japan* (Cambridge, Mass.: Harvard University Press, 1968), p. 203. “Katô’s biographer calls it the ‘passport for passage of universal suffrage and the ratification of the Japanese Soviet’ (*ibid.*, p. 203).

<sup>84</sup> *ibid.*, p. 296.



universal suffrage was introduced at the expense of the political participation of the proletariat.”<sup>85</sup>

Moreover the Peace Preservation Law, which came in tandem with the normalisation of diplomatic relations with the Soviet Union, reinforced a pattern in which the domestic operation of the state and its international operation were “legitimately” separated. The Katô government signed the Soviet-Japanese Basic Convention on 20 January 1925. The convention banned each signatory from sponsoring activities or financing organisations that would “endanger the order and security in any part of the territories” of the other.<sup>86</sup> Yet the ban could not stop contact and exchange of opinions among individuals, as the convention also “guaranteed reciprocal freedom of movement and protection for each country’s nationals in the other’s territories”. Thus a tighter, more comprehensive control of political activities became all the more necessary, prompting the government to propose the Peace Preservation Bill.<sup>87</sup> Within the government little substantive debate took place as to the compatibility between diplomatic and domestic policy. Vague notions of the national interest, such as the containment of Soviet aggression and possible economic benefits, were thought persuasive enough to deflect attention from the bill’s potential repressive power.

Nevertheless it seems incontestable that the Peace Preservation Law made it easier for the military to overcome “seditious” activities. For the invocation of “*kokutai*” could now shield them from criticism, rendering dissent suspect and unpatriotic. Language as well as legislation was increasing the authoritarian grip on power. It was the civilian government’s facilitation of this process, through both strategic concession

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<sup>85</sup> Matsuo, *Futsûsenkyo Seido Seiritsushi no Kenkyû*, pp. 331-2.

<sup>86</sup> Its Article 5 reads: “The High Contracting parties solemnly affirm their desire and intention to live in peace and amity with each other, scrupulously to respect the undoubted rights of a State to order its own life within its own jurisdiction in its own way, to refrain and retain all persons in any governmental service for them, and all organisations in receipt of any financial assistance from them, from any act overt or covert liable in any way whatever to endanger the order and security in any part of the territories of Japan or the Union of Soviet Socialist Republics. It is further agreed that neither Contracting Party shall permit the presence in the territories under its jurisdiction—(a) of organisations or groups presenting to be the Government for any part of the territories of the other Party, or (b) of alien subjects or citizens who may be found to be actually carrying on political activities for such organisations or groups.”

<sup>87</sup> For analysis of the convention and the Peace Preservation Law, see Kobayashi Yukio, “Nisso Kihon Jôyaku Dai Go-jô to Chian Iji Hô”, *Jinbungakuhô*, vol. 10, March 1959, pp. 133-64.



and its failure to define national interests relevant to the population as a whole, which led to the demise of party politics in pre-war Japan.<sup>88</sup>

Modernisation in Japan also meant the increasing domination of institutions over people's lives. The country's imperial expansion was accompanied by a growing emphasis on public morality in state education. A Shrine Office was established within the Home Affairs Ministry in 1900, the first step to establish "State Shinto". In 1904, the government ordered schools to use ethics textbooks that it compiled. Former ethics textbooks had included such sections as "other people's freedoms", "social progress" and "competition" which were now replaced by the more nationalistic "*kenkoku*" (the foundation of the nation), "*kokutai no seika*" (the refinement of national polity) and "*chûkô ittchi*" (unity of loyalty and filial piety).<sup>89</sup> Government attempts to align public-spiritness with its own policies are also especially apparent in the *Boshin Shôsho* of 1908, an "imperial announcement" that emphasises frugality, hard-work, saving, and a moral life to stave off financial difficulties after the Russo-Japanese War, increasing labour disputes and public discontent. Colonial developments, too, as well as the sheer pace of internal change, made a compliant people all the more necessary. Domestic control is the other side of Japan's modernisation and expansionism.

Thus, from the earliest stages of colonialism, a variety of writers began to consider the relationship between government and the individual.<sup>90</sup> The tension between social (political) power and individual lives became a theme for many of them, including Mori Ôgai (1862–1922), Natsume Sôseki (1867–1917), Tokutomi Roka (1868–1927), and Ishikawa Takuboku. Ogai's *Kano yôni* of 1912 depicts a man who studied in Europe

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<sup>88</sup> Co-ordination of diplomacy and domestic policy became increasingly difficult for civilian government. Thus emerged the dual structure of power, one represented by Parliament-backed government and the other by the military which claimed to work directly for the emperor. Accordingly, Japan signed the Pact of Paris of 1928 (a non-war international treaty), declaring that the country was exempt from the non-war clause since the supreme command of the Army and Navy belonged to the emperor under its Constitution. When the government led by the civilian Prime Minister Hamaguchi Osachi signed the London Naval Limitations Treaty in 1930, it had to overcome the Navy's opposition that the ratification was in violation of the supreme command of the emperor.

<sup>89</sup> Ishida Ichirô, "Meiji no Seishin to Kokumin Dôtoku no Keisei", in Furukawa Tetsushi and Ishida (eds.), *Kindai no Shisô* 1, *Nihon Shisôshi Kôza* 6 (Tokyo: Yûzankaku Shuppan, 1976), p. 229.

<sup>90</sup> The High Treason Incident of 1911, in which 11 socialists and anarchists were executed for treason, shocked many writers as a demonstration of state power.

and would like to write a real history of the country but fears that some power (traditions) may not allow him to do it. Sôseki's *Kokoro* [*The Heart*] of 1914 portrays a student torn between personal feelings and social obligations. Roka wrote *Muhon-ron* [*A Theory of Treason*] shortly after the arrest of Kôtoku Shûsui, in which he said, "the best government is like a well-made hat that you will not notice wearing". Particularly incisive is an essay by Ishikawa Takuboku, "Jidai Heisoku no Genjô [No Way-out in Our Time]" written in 1910, when the author was 24.<sup>91</sup>

This essay was written in response to an earlier essay by another writer which had urged young people to challenge the state. Takuboku shares the view that the state is a threat to individual freedom. Nevertheless Takuboku finds the real problem to be the absence of interaction between authority and individual. Thus he says:

We the Japanese youth have never confronted authoritative power [the state] and have had no occasions to recognise the state as a real enemy... We are concerned with the state only when the state interferes in our personal interests. Once an encounter is over, we become strangers again.

For Takuboku the state is alien and remote, the promoter of a status quo fortified by "institutions" and a capitalist economy. And young people especially are powerless, their choice either detachment or uncritical acceptance of the system. But both indifference and acceptance are tacit endorsements of the status quo. Takuboku is concerned with general social problems, such as unequal educational opportunity, high unemployment among graduates, and urban poverty, and proposes a critical assessment of the state and society. "It is impossible to build our own society without examining the status quo", he says. Takuboku, a poet himself, is equally concerned with Japanese writers' inability to discuss social realities with empirical vigour and sympathetic concern. Instead he finds they merely indulge in undigested "realism" or such transcendental values as "morality" and "aestheticism". Takuboku dismisses both

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<sup>91</sup> "Jidai Heisoku no Genjô" is included, for instance, in *Ishikawa Takuboku, Kanshō Nihon Kindai Bungaku* 6 (Tokyo: Kadokawa Shoten, 1982), pp. 197-209.

approaches as a failure to combine action and observation, and to present human beings as autonomous, social beings.<sup>92</sup>

Such sentiments contrast markedly with the situation 50 years before, when Itagaki Taisuke and others left government over the Seikanron debate, saying that they could no longer work for a government led by the emperor. For them state power was still embryonic, engaged with the structures as well as the realities of power. Now 50 years later, those structures are firmly in place, and for some, especially the young, they are the cause of increasing concern. Takuboku's generation, born after the Jiyûminken Undô had subsided and who entered school after the promulgation of the Imperial Rescript on Education, was confronted by the enormity of state institutional power. For them their country was already an empire. The emperor's position as head of the state and of government was secured by the Constitution. The initial stages of a capitalist economy were firmly established. At the same time, the state sponsored recurrent conscription, a highly meritocratic educational system, and burdensome taxation.

Takuboku proposed an end to acquiescence in a vigorous and critical assessment of the status quo. By calling for a return to first principles, Takuboku is advocating a civil society where political authority is not an established fact but a creation of critical debate among its members. His essay crudely yet eloquently anticipates the concern with individual freedoms within civil society of the new generation of social radicals. The three subjects of this study, Minobe Tatsukichi (1873–1948), a constitutional scholar, Sakai Toshihiko (1870–1933), a socialist reformer, and Saitô Takao (1870–1949), an opposition politician, all belong to this category. All were searching for a liberal political community, where the individual could coexist with the commonweal.

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<sup>92</sup> Maruyama Masao and other historians regard the late Meiji period as a period of crucial transformation of Japanese nationalism. The emphasis on Japanese nationalism (*nihonshugi*) was renewed by Takayama Chogyô and other young writers at the turn of the century. "This new nationalism was fundamentally different from nationalism advocated by their predecessors, such as Kuga Katsunan. The aspect of grass-roots demands for freedom and equality, which was prominent in earlier nationalism, was now replaced by authoritarian statism. Thus, those young nationalists mythologised the emperor as absolute sovereign, denied freedom of thought, speech, and academic inquiry, and took a fully imperialistic view towards Taiwan. Sympathy for the socially deprived, particularly for poor workers, which was also discernible in

In 1867 the definition of national goals had been relatively easy for government leaders. Yet as the role of government expanded, so did the need to control the people. As we have seen, various measures were introduced to quell political opponents, and to limit freedom of expression. Press laws were crucial for the new government from the very start. These laws targeted all shades of political opinion. Therefore, by the new century, both left and right tended to view government as oppressive. Armed with this image of government, and their own interpretations of the Meiji Restoration as a revolution by force, nationalist groups found their excuse for violent resistance. Ultra-nationalists and militarists had been present in the Meiji State from the outset, but by the 1930s they had become extremely active. Hence if government's persistent attempts to coerce the people had prompted an extremist backlash, alienation from government was now endemic because of the emergence of "the infallible state". Nationalist pressure, however, prompted the government into further repression of liberal opinion.<sup>93</sup>

So in 1935 Minobe's Emperor-as-Organ theory was publicly declared heretical by the government. As the emperor had become increasingly the symbol of national unity, so Minobe's denial of absolute imperial sovereignty became more and more unacceptable for right-wing nationalists. Anxious for its own tenure on power, the government proclaimed "the sacredness" of imperial sovereignty in a public statement.

A little later, in 1937, the government published the *Kokutai no Hongi* a month before the outbreak of the Sino-Japanese War, because, the booklet explains, "it is an urgent task to clarify the national polity (*kokutai*) and inspire the national spirit". Now the emperor embodies indisputable evidence of national existence in the past, present and future. To obey him is to preserve the very essence of Japan's nationhood. The Constitution is an order, and the order a fact, leaving no room for debate. This

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earlier nationalism, had now disappeared. Instead the Darwinian law of the jungle had become their principal view on both domestic and external affairs" (Maruyama, "Meiji Kokka no Shisō", pp. 231-2).

<sup>93</sup> The Manchurian Incident in 1931 was a watershed in terms of domestic nationalism. The incident made many Japanese "nationalist". Excluded from the decision-making process, they could only perceive the state as an image, mostly provided by the government. They were connected to the state emotionally, but they were alienated from government. Without accurate information about their government and the international situation, and only fed with this image of "national crisis", many Japanese were susceptible to state ideology and propaganda.

document, product of a beleaguered party and the forces acting upon it, constructs a notional Japanese society, harmonious and orderly, a “family” with the emperor as its head, and this family is dissent-free. Dissent is now un-Japanese, incompatible with membership of the “*kô*”, the national body “politic”.

Thus discretionary measures and arbitrary social edicts, used first by the early Meiji leaders to steer reform and buttress their fragile authority, had now completely overtaken constitutional government. Discretionary powers now sustained an authoritarian state, because national policy had been pursued at the expense of egalitarian concepts and practices. Economic and political imperatives may have forced the political elite to continue relying on the use of unaccountable power, but such power was self-destructive in the long run. Thus Dicey implies that discretionary powers cannot be used to achieve national independence and free government simultaneously. Japan’s failure therefore was not to ensure free government. But what constitutes free government? What kind of free government was possible in pre-war Japan? Minobe, Sakai, and Saitô all criticise the discretionary power of government and address the role of government with regard to the people. Scrutiny of Minobe’s legal state, of Sakai’s economic egalitarianism, and of Saitô’s parliamentary government will allow us to locate some of the key difficulties, problems and tensions that the Japanese faced when they tried to build a civil society.

# Minobe Tatsukichi: The Legal State and its Obstacles

Japan's "coerced" modernisation required and resulted in the creation of discretionary power in government. As we have seen the arbitrariness of executive power was institutionalised in the Meiji Constitution in such concepts as *taiken* (the imperial prerogative) and *seifu* (government). However, the question of legitimacy—how to bring the people into the political system—remained an unmet challenge for successive Japanese governments: their coercive attempts to eliminate dissenting opinion testify to a failure to solve the question. Minobe Tatsukichi's commitment to the legal state, Sakai Toshihiko's vision of economic egalitarianism, and Saitô Takao's emphasis on parliamentary government were all inimical to the exercise of such governmental authority and to the pre-war state ideology. This chapter will discuss Minobe's constitutional theory as a critique of the political and legal structure of the pre-war Japanese state.

As we have seen in Chapter 1, the arbitrariness of executive power was institutionalised in the Meiji Constitution and in various related laws by means of a fluidity of language and the absence of a self-regulating mechanism. Thus the Constitution legitimised the operation of discretionary power by incorporating into the political structure such open-ended concepts as *taiken* and *seifu* without clear rules for regulating them. It also failed to establish parliamentary control of the Cabinet and of the military, while in the press-laws and laws to restrict political activities, elastic phrases such as "*annei chitsujo*" (public peace and order) allowed those in authority to define the illegality of private activities on their own terms. Such institutional fragility was also accompanied by a high degree of emotive political manipulation. In the light of these factors the dissolution of constitutional government and of parliamentarianism in the 1930s is a pernicious consequence not only of contextual forces but also of institutional flaws.

Minobe Tatsukichi steadfastly criticised the operation of such "lawless" authority through his insistence on the legal state. This chapter will therefore follow



Minobe's thought and career in its criticism of the discretionary powers of law and its exercise. However, although Minobe is widely regarded as the father of modern constitutional studies in Japan, his theory has also been criticised, by pre-war Marxist-trained scholars and by some of the post-war generation of political scientists, for the inadequacy of its support for parliamentarianism and the rights of the people. The chapter will therefore attempt to shed light on the Japanese society of the time through the problems Minobe encountered in asserting a legal state, but it will also attempt to assess the strengths and weaknesses of his theory.

## 2.1. Introduction: brief biography and previous studies

Minobe Tatsukichi was born in 1873 in Takasago City, Hyôgo Prefecture as the second son of a doctor of Chinese medicine.<sup>1</sup> Because the family was not wealthy, the father had to supplement the family income by teaching Confucian and other Chinese classics at home. Minobe studied English at a school run by an English missionary in Kobe before attending the First High School's preparatory course in 1888. He had to interrupt his studies for two years, perhaps because of financial difficulties. After graduating from high school, Minobe studied at the Tokyo Imperial University thanks to financial support from his older brother who had already begun his career and through a scholarship from the university. He graduated from the university in 1897, and joined the Home Affairs Ministry against his initial wish to continue his studies.

In the following year, Minobe resigned from the ministry and returned to the university to study comparative legislative history. Between 1899 and 1901, he studied in Europe, in England and France, but particularly in Germany. Upon his

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<sup>1</sup> The biographical information provided in this section is based on the following: Ienaga Saburô, *Minobe Tatsukichi no Shisôshiteki Kenkyû* (Tokyo: Iwanami Shoten, 1964); Matsuo Takayoshi, "Minobe Tatsukichi", in Inoue Kiyoshi (ed.), *Nihon Jinbutsushi Taikei*, vol. 7 (Tokyo: Asakura Shoten, 1960), pp. 269-307; Frank Miller, *Minobe Tatsukichi: Interpreter of Constitutionalism in Japan*, Chapter II, "Minobe's Career to 1934" (Berkeley: University of California Press, 1965), pp. 22-42; Nakase Hisaichi, "Minobe Tatsukichi no Gakusetsu", in Kishimoto Eitarô and Koyama Kôken (eds.), *Nihon Kindai Shakai Shisôshi* (Tokyo: Aoki Shoten, 1959), pp. 328-44; and Okudaira Yasuhiro, "Minobe Tatsukichi", in Hasegawa Masayasu (ed.), *Bunken Senshû, Nihonkoku Kenpô*, vol. 16 (Tokyo: Sanseidô, 1978), pp. 197-210.

return, he began to teach comparative legislative history at the university as professor of law, a post he maintained until his retirement in 1934 at the age of 62. Thus Minobe began his career as an expert on comparative and administrative law, although he is most remembered as a constitutional scholar. However it was not until 1920 that Minobe began to teach constitutional law at the university when he was appointed to a second chair in the discipline.

Although his name is frequently associated with the Minobe Affair of 1935, in which the government was forced to denounce his constitutional theory as “heretical”, Minobe’s career was deeply grounded within the establishment. He was a member of the higher civil service examination board from 1903, and a member of the Imperial Academy from 1911. He sat on various government committees, including one established by the Katô government in 1922 to discuss revision of the electoral law.<sup>2</sup> By the time of his retirement he had been promoted to “the first rank of the higher civil service” (*chokunin ittôkan*). Minobe was also appointed a member of the House of Peers in 1932, a post he had to give up three years later. In 1903, he married a daughter of Kikuchi Daikan, president of Tokyo Imperial University (1898–1901) and an education minister (1901–3) in the first Katsura Cabinet. His mentor at the university, Ikki Kitokurô, also assumed various key government posts: home affairs minister in the Ôkuma Cabinet (1914–16), official advisor to the emperor (1925), head of the Sûmitsuin (1934–6), and minister of the imperial household in 1936. Ikki was among a group of senior officials of the Okada government (1934–6) who were regarded by their political opponents as pro-Anglo-American, parliamentary and liberal, and his political career also ended in the wake of the Minobe Affair.

By the time of his retirement, Minobe was already a celebrated scholar. Between 1899 and 1934, he published some 45 books and 270 academic papers, excluding more informal articles that appeared in commercial newspapers, popular intellectual magazines, and the university’s newspaper.<sup>3</sup> Admittedly, a significant number of these were not truly original, being translations from German or English

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<sup>2</sup> Minobe’s view of universal suffrage is examined by Matsuo Takayoshi, *Futsûsenkyo Seido Seiritsushi no Kenkyû*, p. 257.

<sup>3</sup> A list of his publications between 1899 and 1934 is included in Miyazawa Toshiyoshi (ed.), *Kôhōgaku no Shomondai*, vol. 2 (Tokyo: Yûhikaku, 1934) as an appendix.

and intended to introduce the government structures and constitutions of other countries to the Japanese academy. Yet he also wrote a large number of articles about contemporary domestic issues with respect to law and government. Here he returned repeatedly to constitutional questions, including constitutional restrictions on *taiken*, the superiority of *hō* (statutes) to *chokurei* (imperial ordinances), state ministers' responsibility to Parliament, and the auxiliary role of the House of Peers to the House of Representatives, even before his views triggered a fierce public debate with Uesugi Shinkichi, who held the first chair of constitutional law at the university, in 1912. Reform of the electoral law is also a recurring theme, as are the principles of administrative law,<sup>4</sup> and he attended constantly to the permissible jurisdiction of administration vis-à-vis the rights of the people. Thus Minobe frequently wrote about the abuse of police power and the necessary reform of the courts, and it is at this juncture between theory and its application that he transcended his role as arbiter and became a critic of existing practices.

This combination of theory and practice is a rare trait for Japanese academics, according to Ienaga Saburō. "Since the establishment of the modern academy in the second decade of the Meiji period, academics tended to separate 'knowledge' from thought, except for the enlightened early Meiji thinkers. Scholars either were preoccupied with absorbing new knowledge and technology while ignoring philosophical questions, or indulged in metaphysics void of empirical argument... Minobe's legal theory is a rare example in which logic based on intellectual tenacity, and philosophy with practical aims are combined."<sup>5</sup> Ienaga's view is disputed, however. Many see the combination of Minobe's logicity and his "natural law" thinking as flawed. This is because they see it as a combination of science and subjectivity, of logic and opinion, which they assume are incompatible. Thus Frank Miller says, "His [Minobe's] format was highly systematized, giving an appearance of close logic, accented by a terse, lucid style. This appearance was somewhat

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<sup>4</sup> Miyazawa Toshiyoshi likens Minobe's role to that of Otto Mayer in Germany who in his country established administrative law as a discipline with a theoretical structure. See Miyazawa, "Minobe-sensei no Gyōseki", *Nihon Kenseishi no Kenkyū* (Tokyo: Iwanami Shoten, 1968), p. 315. The article appeared originally in *Kokkagakkai Zasshi*, vol. 62, no. 7, 1948. Okudaira Yasuhiro also points out Mayer's influence on Minobe as well as that of Jellinek, but Minobe was responsible for introducing into Japan concepts of administrative law. See Okudaira, "Minobe Tatsukichi", p. 207.

<sup>5</sup> Ienaga, *op. cit.*, p. 341.

deceiving, for the blueprint to which he ordered the body of constitutional and administrative law reflected his own peculiar orientation, his will to find in that body of law a harmony with constitutional principles as he understood them.”<sup>6</sup> Miller even describes this combination of logical discourse and private ideology as contradictory. Yet as I hope to show in this chapter objective logic and subjective opinion are compatible and their co-existence is one of Minobe’s strengths, as Ienaga says.

In any event Minobe’s Emperor-as-Organ theory received wide attention when he published *Kenpô Kôwa* in 1912 based on the lecture he had given a year earlier to middle-school teachers in a seminar organised by the Education Ministry. In both the text and the lecture Minobe articulated his constitutional theory: that the state is an independent organisation, that sovereignty resides in the state, and that the emperor exercises the will of the state as an organ of the state based on the Constitution. In this theory, the emperor no longer exercises his personal authority, but rather enjoys power entrusted to him by the state through law.<sup>7</sup> Yet this denial of the emperor’s personal rule ran directly counter to the forces of discretionary power, which stressed the political and symbolic role of the emperor in the newly formed centralised government, and their reinforcement through the Constitution.

Thus Suzuki Yasuzô, one of the first scholars to assess Minobe’s works against the background of the country’s political and social situation, distinguishes three schools of constitutional theory that existed in Japan after the Meiji Restoration: absolute monarchism, constitutional monarchism, and popular sovereignty. But since popular sovereignty never gained full support as an academic theory, the history of constitutional theory in Japan involves a constant battle between absolute and constitutional monarchism.<sup>8</sup>

For those who supported absolute monarchism, the emperor and the country’s history are inseparable and their fusion was enough to justify any authority exercised

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<sup>6</sup> Miller, *op. cit.*, p. 55.

<sup>7</sup> Miyazawa Toshiyoshi, a constitutional scholar and one of Minobe’s pupils, wrote in 1948 shortly after Minobe’s death: “Before Minobe, theocratic absolutism, a Japanese version of the divine right of kings, was the dominant theory in the academic community. Minobe challenged this theory squarely, and attempted to eliminate all irrational and undemocratic arguments from the discipline in order to establish truly scientific constitutional studies.” See Miyazawa, “Minobe-sensei no Gyôseki”, p. 317.

<sup>8</sup> Suzuki Yasuzô, “Nihon Kenpôgaku no Seitan to Hatten”, *Shisô*, May 1934 (vol. 144), pp. 159-96.

in his name. Thus, for them, sovereignty resides in the emperor, the Constitution is his order, and Parliament is an office run by the executive power. *Taiken*, the imperial prerogative, embodies the unlimited authority of the monarch. Iwakura Tomomi, and Inoue Kowashi, who wrote the Constitution with others, represent this school. However it was Hozumi Yatsuka, a professor of constitutional theory at the university since 1889, who for the first time formulated an absolutist interpretation of the Constitution based on his selective acceptance of various German theories, *kokugaku* (nativist) learning, and a particularistic interpretation of *kokutai*, or national polity. Hozumi's theory of *taiken* became orthodox in the early days of the Constitution's operation because its constitutional interpretation justified the operation of the *hanbatsu* plutocracy's "transcendentalism".<sup>9</sup>

On the other hand, the school of constitutional monarchism insisted that sovereignty resides in the state, and that the monarch and the people should participate in the management of state affairs jointly through Parliament. The school's rise and fall reflects the evolution of the state structure and change of economic and social conditions in the country, according to Suzuki.<sup>10</sup> Thus, when party politics gained strength in the 1890s, the school was given momentum by Ariga Nagao and Minobe's mentor Ikki. Yet it was left to Minobe to consolidate the school with his Emperor-as-Organ theory.

Thus in the preface to *Kenpô Kôwa*, Minobe criticised Hozumi's theory without naming him, saying that "some scholars pretend to support constitutional government but in fact they advocate autocracy through exploitation of the concept of *kokutai*, while undermining the rights of the people and demanding their absolute obedience". Here Minobe criticises Hozumi's historicism, Japanese particularism, and the endorsement of imperial discretionary powers at the expense of popular rights. His views, says Suzuki, were "extremely liberal in principle and approach" compared with the conventional school led by Hozumi.<sup>11</sup>

Along with his career itself, the vicissitudes of Minobe's Emperor-as-Organ theory serve as a barometer of political change, and indicate shifts in the political and popular support for representative government, and of tolerance towards Japanese

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<sup>9</sup> *ibid.*, pp. 177-81.

<sup>10</sup> *ibid.*, pp. 192-3.

<sup>11</sup> *ibid.*, p. 194.



freedom of thought. Thus when the theory received wide attention following the Minobe-Uesugi debate of 1912, Minobe was able to say confidently that the idea of state sovereignty had been commonly accepted.<sup>12</sup> Many academics also supported Minobe's position in the debate. However by 1934 Minobe had to concede that the absolute monarchism advocated by Hozumi had become "de facto official theory" and that it could be found in the school texts produced by the government.<sup>13</sup>

Minobe's theory had gained prominence when political power was shifting to political parties from the *hanbatsu* plutocracy, backed by the state bureaucracy and the military. In fact the Minobe-Uesugi debate is contemporary with the Taishō Political Crisis, an event often described as the beginning of the Taishō democratic movement. In early 1913, the Katsura Cabinet, which the public saw as colluding with the military in supporting its fiscal demands, faced violent mass demonstrations in Tokyo, Osaka and other cities. The cabinet's attempt to stay in power by issuing an imperial instruction after Parliament had adopted a vote of no confidence against it failed, and with thinning support even among the senior leaders it was forced to resign. By contrast, the demise of Minobe's theory 20 years later echoes Japan's increasing international isolation and attempts by the military to buttress its activities after the Manchurian Incident of 1931. By then confrontation between the civilian government and the military was already intense. In 1930, for example, Prime Minister Hamaguchi Osachi had had to overcome the Navy's opposition, when his government signed the London Naval Limitation Treaty: the Navy claimed that the government violated the supreme command of the Army and the Navy, which belonged to the emperor. Minobe was a chief advisor to the government on this matter. Nevertheless the Manchurian Incident led to Japan's withdrawal from the

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<sup>12</sup> However, there was also strong hostility to Minobe's theory within the government. The *Tokyo Nichinichi Shimbun* reported, retrospectively on 17 March 1935, that Yamagata Aritomo, then chairman of the Sūmitsuin, demanded Minobe's resignation from the university. His demand was blocked by Ōkuma Shigenobu and Ikki. The article is quoted by Miyazawa, *Tennō Kikansetsu Jiken*, vol. 1 (Tokyo: Yūhikaku, 1970), fifth impression 1972, pp. 198-9.

<sup>13</sup> Minobe, *Nihon Kenpō no Kihonshugi* (Tokyo: Nihon Hyōronsha, 1934), p. 11. In 1934 Suzuki Yasuzō also observed that Minobe's *Kenpō Satsuyō* had been criticised as a "sophism intended to change *kokutai*". "After the death of Uesugi, the historical school had disappeared from the academy. However, the recent political climate has brought it back, and it is challenging constitutionalism. Their confrontation is not purely academic. Already the bourgeoisie, or part of it, is planning to undermine parliamentarianism by calling for totalitarianism, the establishment of a unified Cabinet and a national council. Even among those who are not the bourgeoisie, some people are calling for an end to party politics. Thus the country's constitutional studies have come to a grinding halt" (Suzuki, "Nihon Kenpōgaku no Seitan to Hatten", p. 193).



League of Nations one and a half years later, to tighter coercive pressure at home, and to the growing influence on policy making of the military and of bureaucrats calling for radical reform of government.<sup>14</sup>

Thus in 1935, at a pivotal moment, Minobe's theory was criticised in the House of Peers as incompatible with the country's national polity, *kokutai*. Elements of the military, military reservists, and extreme nationalists joined hands to demand Minobe's dismissal. Under pressure, the government declared the theory "heretical" and banned three of Minobe's major works on the Constitution. After some resistance, Minobe resigned from the house. The affair is widely regarded as marking the end of constitutional government in pre-war Japan.<sup>15</sup>

Nevertheless after he had withdrawn from most of his public posts, Minobe continued his legal studies privately, particularly in administrative law and the examination of legal precedent. What Ienaga Saburô calls his indispensable book on the electoral process, *Senkyo Bassoku no Kenkyû* [*A Study of Sanctions for Violations of Electoral Law*], was written during this period. Minobe also participated in private constitutional studies,<sup>16</sup> and after the war, he advised the government when it tried to revise the Constitution under the pressure of the Supreme Command for the Allied Powers. Minobe defended the monarchy and opposed any move that would hold the emperor responsible for his involvement in the war and would lead to his abdication. Still a highly contentious figure, Minobe died in 1948.

If Minobe's position in defending the Constitution and Parliament has been firmly established, assessments of his work are mixed. This is partly because of difficulty in assessing pre-war Japanese liberalism as a whole.

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<sup>14</sup> Both groups now began to formulate their own policies. The Army published a pamphlet "Kokubô no Hongi to sono Kyôka no Teishô" on 1 October 1934, which one historian describes as the Army's first attempt to take over government fully through a policy proposal. See Ôuchi Tsutomu, *Fuashizumu e no Michi*, Nihon no Rekishi series 24 (Tokyo: Chûô Kôronsha, 1967), p. 377. The so-called "new" bureaucrats also began to become more vocal after the Manchurian Incident.

<sup>15</sup> For such an interpretation of the Minobe Affair, see, for instance, Mitani Taichirô, "Tennô Kikansetsu Jiken no Seijishiteki Imi", in Ishii Shirô and Higuchi Norio (eds.), *Soto kara mita Nihonhôtei* (Tokyo: Tokyo Daigaku Shuppankai, 1995), pp. 433-61.

<sup>16</sup> The study group was organised by Count Itô Harumasa in 1941. Leading constitutional experts, including Minobe, Sasaki Sôichi and Miyazawa Toshiyoshi, joined the group. See Emura Eiichi (ed.), *Kenpô Kôsô*, pp. 490-2.

Broadly speaking two main approaches have been taken to assess Minobe's theory historically. One attempts to use the theory to explain the metamorphosis of the country's constitutional and political institutions. Thus these works focus on the Minobe-Uesugi debate of 1912, and the Minobe Affair of 1935, as clear yardsticks of the alternating strength and demise of constitutional principles and parliamentarianism. Most previous work belongs to this category.

The other approach emphasises intrinsically liberal values in Minobe's theory and attempts to understand it as a defence of civil liberties against intrusive state power. Of course the two approaches often overlap, yet comprehensive studies of Minobe's thought in the second category are relatively few. Ienaga Saburô's study of 1964 remains an exception, yet it is this approach that I hope to follow.

Among the earliest works that see Minobe as a promoter and defender of civil liberties is Ukai Nobushige's essay of 1948.<sup>17</sup> Ukai, a legal scholar and one of Minobe's pupils, describes Japan's modern history as a conflict between statism and citizens' demands for liberties, and sees Minobe's theory as an attempt to bring "the concept of liberty into the authoritarian and absolutist state created by the Meiji Constitution". Ukai singles out the following areas of Minobe's work as manifestations of his liberalism: his call for restrictions on *taiken*, his support for civil liberties, and his emphasis on the need for a curtailing of the discretionary powers of the administration. Such perspectives continue to be fundamental.<sup>18</sup>

Ukai's views were developed by Isomura Tetsu, a specialist in civil law (*minpô*), who followed the Kôza-ha Marxist interpretation of the Meiji Restoration. For him the Meiji Restoration was a revolution "from above", which resulted in the reinforcement of traditional feudalistic absolutism combined with industrial capitalism. He too assumed that the growing prominence of the school of constitutionalism, to which Minobe belonged, was in response to changes in Japanese society. However, rather than attributing the rise of Minobe's theory to the growing political assertiveness of the capitalist bourgeois class, Isomura allies Minobe with a group of legal scholars who began to emphasise civil liberties during

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<sup>17</sup> Ukai Nobushige, "Minobe Hakase no Shisô to Gakusetsu", *Hôritsu Jihô*, vol. 20, no. 8, August 1948, pp. 45-9.

<sup>18</sup> Ukai asserts: "A battle against government power (*kanken*) was Minobe's life-long work." And he confirms Minobe's insistence on the illegality of key government decisions (see, especially, *ibid.*, p. 49).

the Taishô democratic movement.<sup>19</sup> Isomura sees Minobe not as a bourgeois apologist but as a promoter of civil rights.<sup>20</sup>

Hence, in this view, the progress of a capitalist economy after World War I prompted workers and tenant farmers to assert their rights in the economic sphere. This new assertiveness challenged the “traditional” social order based on the patriarchal family, the informal yet rigid status system, and the traditional communal mentality, on which Hozumi’s absolutism had relied. Thus, during the Taishô democratic movement, absolutist capitalist authority was challenged “from below”. Such a force demanded a civil social order in which the legitimacy of political authority would be recognised only by law. Minobe’s contribution, along with that of other *shimin hôgaku* scholars, was to try to establish a legal basis for the relationship between state and people, rather than simply to accept the master-servant relationship which had underpinned Meiji absolutism.

Furthermore, to protect civil liberties, state authority must be restricted. Thus, Isomura continues, Minobe’s organ theory intends “to detach state authority from the unquantifiable, patriarchal, and personal control of the emperor and to define it as an independent, self-complete process”.<sup>21</sup> Thus Isomura asserts that Minobe’s theoretical work laid the groundwork for the transformation of Japan into a civil society by proclaiming the autonomy of the law and putting a legal check on the exercise of political power.

Isomura’s view that Minobe’s legal theory aimed at preventing abuse of state power is further developed by Ienaga Saburô in his *Minobe Tatsukichi no Shisôshi teki Kenkyû* of 1964. Ienaga too finds the essence of Minobe’s theory to lie in his assertion that no political power is limitless, in direct antithesis to Hozumi’s and Uesugi’s imperial absolutism. Substantive restriction should come from Parliament and also from institutional reform. Thus Ienaga emphasises Minobe’s criticisms of the abuse of discretionary power in such areas as inadequate attention to due process, insufficient protection of freedoms of speech and thought, and the treatment of

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<sup>19</sup> Isomura refers to the school as “*shimin hôgaku*” (studies of law for citizens), and describes Minobe’s theory as an attempt to establish civil liberties through interpretation of law and its application. A leading figure of this school is Suehiro Izutarô. See Isomura, “Shimin Hôgaku” (part II), *KNKH*, vol. 9, pp. 161-94.

<sup>20</sup> *ibid.*, pp. 170-1.

<sup>21</sup> *ibid.*, p. 182.

suspects in the criminal justice system. Minobe was one of the very few legal experts who recognised the right to resist illegal police action, at a time when an orthodox view in the academy was that the police could charge people with obstruction of their “public” duties even if the duties were not necessarily legal.<sup>22</sup>

In fact, as the exercise of discretionary power became more apparent, Minobe’s criticisms had gone straight to the heart of the workings of government. Thus he had criticised the Peace Preservation Law of 1925, its revision of 1928, and then the increasingly assertive military. In October 1934, against the background of the accelerating fragmentation of state authority, the Army published its first independent policy statement, seeking the public’s direct support for the reinforcement of the country’s military capability.<sup>23</sup> Minobe, in an essay he wrote shortly after the publication of the pamphlet, criticised the document’s totalitarian implications, saying that the country’s post-Restoration history demonstrated that what made the country strong was individual creativity, not military power, and that demanding the people’s slavish subjugation was tantamount to destroying the country’s constitutional arrangements.<sup>24</sup>

Again in January 1935, shortly before he was criticised for reaffirming his theory, Minobe had criticised the treatment by government prosecutors of the suspects in the Teijin Incident, including their arrests without concrete evidence, detention without adequate legal grounds, and forced confession.<sup>25</sup> Ienaga, by highlighting these and other incidents in the life of a man of firm principle, concludes that central to Minobe’s criticism of “illegal” political power is a liberal creed, to which he may have been drawn under the influence of traditions of civil liberty expressed by Locke and the bills of rights of the United States and France.<sup>26</sup>

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<sup>22</sup> Ienaga, *Minobe Tatsukichi no Shisôshiteki Kenkyû*, p. 178.

<sup>23</sup> “Kokubô no Hongi to sono Kyôka no Teishô” published by the Army Ministry’s press section.

<sup>24</sup> Minobe, “Rikugunshô happyô no Kokubôron o yomu”, *Chûô Kôron*, vol. 49, no. 12, November 1934, pp. 125-32. In this essay Minobe calls the publication an “undisciplined, irresponsible” action based on the military’s private will. He also points out its propagandistic nature, as in the proposed replacement of the country’s official name “Empire” with “Imperial State”.

<sup>25</sup> Despite his keen concern with the protection of human rights and due process of law, Minobe could not complete his study of criminal prosecution, according to Ienaga. This was because criticisms of investigation and prosecution procedure were extremely difficult due to the limited information available. See Ienaga, *op. cit.*, pp. 224-5.

<sup>26</sup> Ienaga, *ibid.*, p. 199.

Nevertheless even as Minobe's reputation as a defender of constitutionalism, parliamentarianism, and civil liberties now appears to have been established, he is still subject to criticism as an advocate of state law and as a defender of the emperor. Here Minobe is associated with the "undemocratic" aspects of the Meiji Constitution, for he adhered to the constitutional monarchy under the constitution, and opposed its revision after World War II. Both issues remain contentious, and Isomura and Ienaga address them at some length.

Isomura asserts that Minobe continued to support the emperor's "ethical" role, and thus justified the preservation of *kokutai* in the ethical realm.<sup>27</sup> He claims that such a sentiment reflects Minobe's failure to envisage a social order for a fully autonomous people. In his view, "Transformation of the relationship between the state and the people into one based on a material order by eliminating relationships of subjugation such as imposed obedience must coincide with the establishment of a personal ethics." The theory that regards the state as a legal person falls short of carrying out this task, since its attempt to overcome the *patrimonium* of absolutism is restricted to the legal system: it does not lead to the concept of a community as one consisting of "autonomous, conscious individuals". In this sense, Minobe's thought is incomplete. However, says Isomura, such limitations were perhaps inevitable, as Minobe tried to "rationalise" the existing structure of power under pressures coming from the emperor system, and the general value system that supported it. "Minobe's limitations reflect a general failure of thought in Japanese society in its modernisation process," according to Isomura.<sup>28</sup>

This judgement, that Minobe was "a liberal interpreter of the Meiji Constitution" but only in terms of the limited social and political conditions of the time, has, I think, several problems. For present within it is the Marxist view that individual thought and action are reflections of the economic and political conditions of society.<sup>29</sup> However, such views tend to subsume the individual within a reductive

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<sup>27</sup> Isomura, *op. cit.*, p. 185. Isomura quotes Minobe as follows: "*kokutai* should be maintained based on ethical and spiritual relationships between the benevolent emperor and the loyal people" (Minobe, "Teikoku no Kokutai to Teikoku Kenpô", in Hoshijima Jirô (ed.), *Saikin Kenpôron: Uesugi Hakase tai Minobe Hakase*, Tokyo: Jitsugyô no Nihonsha, 1913, p. 320).

<sup>28</sup> Isomura, *op. cit.*, p. 183.

<sup>29</sup> Thus, for Suzuki, "... the rise and fall of an ideology or theory about a country's constitution is ultimately determined by the country's objective economic and social conditions of the time" (Suzuki, *op. cit.*, p. 192). This view, reflecting the Kôza-ha school of Japanese Marxism, remains influential



and all-encompassing construct of society, as if one's thought is always and only an expression of external conditions. Since Japanese imperial absolutism is seen as feudalistic and capitalistic, such critics attribute the weaknesses of Minobe's thought to these supposedly determining characteristics of Japanese society.

An immediate problem with this approach is that it underestimates the role of the individual within the processes of social change. The problem is reflected in the common assessment of modern Japanese thought as if the individual is incapable of creative criticism of the time. However, individuals are not mere passive recipients of social or political values. One prominent British Marxist sees "the whole" not as a predetermined structure of its parts, but as a fluid product of complex interactions between them. Hence people actively participate in the creation of the common life, in society and in history. And if we discard "elements of persistence, adjustment, unconscious assimilation, active resistance and alternative effort"<sup>30</sup>, we may not be able to understand history as "lived experience". Thus it is extremely important to recognise the elements of creative criticism in Minobe's thought in order to understand both him and his period.

Conversely a limitation of the relevant Japanese historiography is its excessive emphasis on the idea of personal failure. Isomura seems to assume that a civil society is realised only if its members become sufficiently autonomous and individualistic. Such a view, though important, again takes our attention away from more central questions about the sources of social change. For while personal consciousness is clearly a key factor in social change, it cannot be divorced from perceptions of, and interactions with, the whole structure of society. Excessive emphasis on personal failure or "inner ethics" underestimates the role of institutions in social change while overestimating human judgement.

Thus, as Habermas demonstrates, the public sphere in the West emerged not because individuals had become more autonomous and liberal, but because they had been able to develop institutions that allowed them to discuss their own affairs. These included salons, coffee houses and reading societies, as well as the "public"

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not only in the assessment of Minobe's work but also of that of pre-war Japanese society as a whole. Indeed, Suzuki's essay of 1934 remains one of the most methodical and articulate expositions of the historical significance of Minobe's theory that has so far appeared.

<sup>30</sup> Raymond Williams, *The Long Revolution* (New York: Harper & Row, 1966), p. 46.



forums offered by newspapers. Growing public consciousness encouraged political change, including that of the legal system. Such changes were of course inseparable from the progress of a capitalist economy. Yet Habermas claims that these actual institutions were central to creating a civil society as a “public sphere” of debating individuals. Personal failure should therefore always be discussed in tandem with close analysis of existing public practices, including not just those of the law, economy, and political convention, but also of those habits and institutions which relate to the exchange of ideas. Only then will we be able to have a more balanced view of the relations between society and the individual.

Thus if we wish to discover why a more complete civil society failed to emerge in pre-war Japan, we must begin by asking whether its putative members had enough opportunities to form such a society. In Chapter 1, we observed how severely such opportunities were curtailed by government. An inquiry into these circumstances, it seems to me, should precede discussion of collective or individual traits. And Minobe’s role should be discussed first in terms of his attitudes towards the available institutions, imperfect though these may have been.

Previous criticism of Minobe’s supposed emperor worship is also, I think, unpersuasive. As Matsumoto Sannosuke demonstrates, organ theories had a double function in the formation of community, as did the role of the emperor.<sup>31</sup> For the formation of a political community always requires some form of central power, regardless of whether the power is absolute or not. Crucial here is whether there is an acceptable balance between that power and the members of the community and how this balance should be achieved. Minobe’s theory should therefore be assessed in terms of his overriding concern for questions of civil liberty and legal equality, rather than of any imputed emperor worship or feudal mentality. For his efforts, as Isomura says, were always to eliminate the emperor from the political structure, and this is far more important than any question of imperial investment.

However, along with emperor worship, Ienaga sees an excessive emphasis on the role of the state as a major weakness of Minobe’s theory, preventing him from fully developing a theory suitable for a civil society. For him, Minobe’s excessive reliance on the concept of the state is both backward and dangerous, because such a

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<sup>31</sup> See Matsumoto Sannosuke, “Tennōsei Hōshisō” (part I), *KNKH*, vol. 10, 1961, p. 10.

state could easily become fascist. “The contradictions of capitalism”, he says, “cannot be solved by merely strengthening state control without increasing the role of the proletariat, particularly when state power is directly or indirectly controlled by capitalists. Rather such a state may transform itself quite easily into a fascist state that swaps the legal state for a ‘cultural’ state. In fact, from the Manchurian Incident onwards, the Japanese state was heading towards destruction of constitutional politics through gradual strengthening of state control. Minobe’s insistence on increased state control appears to be in line with such a fascist orientation, and thus with the advocacy of the reform of the state structure supported by the right wing, the military and those who advocated state socialism.”<sup>32</sup>

This view remains controversial, and poses difficult questions about lines of demarcation between totalitarian and representative governments. In fact how persuasive is it to say that Minobe’s emphasis on the role of the state actually exacerbated the forces he sought to contain? However, even as this study will remain loyal to Marxist traditions and be concerned with social, political and economic conditions, it will also attempt to assess Minobe’s theory by avoiding as much as possible such impenetrable concepts as “feudalism”, “cultural traits” or “backward traditions” (all deriving from Marxist notions of Asiatic modes of production). This does not mean to dismiss such concepts as irrelevant to Japanese society, but rather to try to understand Japanese liberalism, and its limitations, as “lived experience”. Assessments of Minobe’s vision of the state will also be made within this perspective.

Fundamental then, for many historians and political scientists interested in this period, including those of the Kôza-ha school, are questions about the inner trajectory of the Japanese state from its inception (the Meiji Restoration) to the emergence of the imperialistic, militant state of the 1930s. Their shared concern, which was first addressed most vigorously by the immediate post-war Japanese historians and political scientists, including Maruyama Masao, is with ideas of change, continuity, genesis and possible resolution.

Some historians attempt to see these forces in the political system. Yasuda Hiroshi, for instance, responds to the challenge by differentiating the personal

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<sup>32</sup> *ibid.*, p. 92.

characters of the three emperors, Meiji, Taishō and Shōwa, as “active” or “passive” monarchs.<sup>33</sup> Eguchi Keiichi describes what he sees as the co-existence of constitutionalism and absolutism in imperial constitutionalism (*tennōsei rikkenshugi*).<sup>34</sup> Developing Eguchi’s formulation, Masuda Tomoko centres her analysis on the two seemingly contradictory principles, absolute monarchy and constitutionalism. She tries to account for changes in the political structure in terms of confrontation between these two leading ideas. Masuda sees that confrontation most clearly in the behaviour of government leaders over key political decisions (as in the Taishō Political Crisis and the country’s ratification of the London Naval Treaty). And she explores the concept of *taiken seiji*, politics based on the imperial prerogative, articulated by Hozumi to identify imperial absolutism and a political style persistent in pre-war Japan, treating Minobe’s constitutionalism as its antithesis.

Since my own concern is with the evolution of civil society in Japan, this study will assume such perspectives, not only in government but also in the relationship between authority and the individual. I will present Minobe’s theory as an attempt to shift from absolutism to constitutional government, and to conceive in a Japanese context, and within the shifting perspectives of an individual life, the elements of a civil society. Exploiting the studies that have been outlined here, I hope to reassess Minobe’s theory in terms of the tension between imperial absolutism and free government that lies within it.

## **2.2. The Minobe-Uesugi debate: Minobe and the traditions of conservative thought**

Ideological resistance to Minobe’s legal state was most famously articulated by Uesugi in an exchange on the Emperor-as-Organ theory in 1912. In their debate, the most striking difference between the two men is in their views of how social order

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<sup>33</sup> Yasuda Hiroshi, *Tennō no Seijishi* (Tokyo: Aoki Shoten, 1998).

<sup>34</sup> Eguchi Keiichi, *Nihon Teikokushugishi Kenkyū* (Tokyo: Aoki Shoten, 1998). Masuda Tomoko provides a useful survey of recent debates about historiography dealing with this period. See Masuda, *Tennōsei to Kokka* (Tokyo: Aoki Shoten, 1999), especially pp. 11-13.

should be achieved. For Minobe, “Individuals have their own purposes in life. One of the most important ethical requirements of constitutional government is to respect their personalities and free them from enslavement.”<sup>35</sup> For him, public consent is crucial for political power to be legitimate, regardless of whether it is obtained through Parliament or recognised in “common law”. On the other hand, for Uesugi, a man depends on society and the state. “Without the state, we would not be able to assume our vocations whereby we can demonstrate our distinctive abilities... One’s own activity neither reflects one’s sole power nor belongs to oneself alone...”<sup>36</sup> Thus Uesugi urges people to fulfil their prescribed social roles, thereby maintaining the basic fabric of society, while Minobe emphasises social and individual freedom.

As we have seen, the debate of 1912 occurred at a time of fundamental change in the political structure and in people’s attitudes towards authority.<sup>37</sup> Political parties had moved to take over executive power, challenging the government, which was associated with the *hanbatsu* plutocracy in the public eye. Minobe articulated political principles in tune with this more assertive public. It was no coincidence that Minobe, then a professor of law at Tokyo Imperial University, delivered his lecture on the Organ theory to middle-school teachers in 1911, just a year before the Taishō Political Crisis, when politicians in the opposition, businessmen against military spending, journalists, and ordinary citizens unhappy about government policies, joined forces. At the same time, Minobe’s exposition scrutinised the legitimacy of political authority, and challenged “traditional” concepts of authority and social order: Uesugi responded to this new force with his staunch loyalty to emperor-centred national unity.<sup>38</sup>

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<sup>35</sup> Minobe, *Kenpō Satsuyō*, p. 152.

<sup>36</sup> Uesugi Shinkichi, *Shinkō Kenpōjutsugi* (Tokyo: Yūhikaku, 1924), eighth impression 1928, pp. 10-11.

<sup>37</sup> The editors of the 11-volume KNKH series published from 1958 to 1967 divide the pre-war period into four phases from the viewpoint of legal history: transition (1868–89), formation (1890–1914), readjustment (1915–31), and collapse (1932–45). The Minobe-Uesugi debate took place at the start of the readjustment period.

<sup>38</sup> Matsumoto Sannosuke points out that the Minobe-Uesugi debate reflects pre-existing disagreement over the meaning of *kokutai* (national polity) in the late Edo period, including that between Yoshida Shōin (1830–59) and Yamagata Taika (1781–1866). See his *Tennōsei Kokka to Seiji Shisō* (Tokyo: Miraisha, 1969), pp. 118-58. A similar view is taken by Furukawa Jun, “Uesugi-Minobe Ronsō: Kokkashugi, Kokutai Kenpōgaku to Jiyūshugi, Gikaishugi Kenpōgaku”, in Sugihara Yasuo (ed.), *Kenpōshisō, Kōza Kenpōgaku no Kiso 4* (Tokyo: Keisō Shobō, 1989), pp. 209-39.

I now propose to analyse such reactionary views as Uesugi's, which were built on traditional thinking, so as to understand the ideological obstacles that Minobe encountered, before we examine his theory more fully.

In fact, Uesugi's ideas are an amalgamation of German statism and Japanese "indigenous" traditions, such as *kokugaku* (nativism), Shinto, neo-Confucianism, and *meibunron*, just as Hozumi synthesises Mito Ideology (his family-state concept derived from Aizawa Yasushi), *kokugaku*, and ideas drawn from the neo-Confucian mainstream ("ethical and political orders are one"), and from German-legal positivism, particularly that of Laband.<sup>39</sup> When Uesugi says that law is a single complete system from which an individual rule is deduced, he is echoing the Germanic constitutionalism that underlies Japanese administrative law. In this thinking, law and political authority are fused, and law is regarded as "a rational expression of political authority". His view of the state has both Platonic and Hegelian elements, and these Western concepts fit comfortably with his traditional view of loyalty based on imperial absolutism and *meibunron*.

For Uesugi, the ideal state is led by the emperor, who is benevolent, and the subjects obey his orders. Such a community is harmonious. The right to rule results from the sovereign's declaration. Such emperor-centred national unity tolerates neither heresy nor individual freedom. Uesugi says, "The subjects owe comprehensive obedience to the rights of sovereignty (*tôchiken*). These obligations are absolute, unconditional and unlimited. They are inherent in the existence of the subject."<sup>40</sup> In his discourse, government, society, and people are fused into the state. As members of the state, the people possess the status of the subjugated (*fukujû*). Thus he dismisses the idea of popular sovereignty altogether, saying that the Japanese polity (*kokutai*) began with the assumption of rule by the emperor's ancestors. This negation of popular sovereignty should be seen as part of Japan's unique experience, setting the country apart from all other monarchies.<sup>41</sup>

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<sup>39</sup> For Hozumi's amalgamation of "Western" and "Japanese" thought, see Richard H. Minear, *Japanese Tradition and Western Law, Emperor, State and Law in the Thought of Hozumi Yatsuka* (Cambridge, Mass.: Harvard University Press, 1970), chs. 7 and 8.

<sup>40</sup> Uesugi, *op. cit.*, p. 264.

<sup>41</sup> *ibid.*, p. 267. "Kokutai", Uesugi says elsewhere, "is determined when the sovereign himself recognises his status... This arrangement does not depend on a contract between him and the members of the state... It does not derive, as the historical school claims, from the confidence that common people have in the person so that they will recognise him as their sovereign. With the sovereign's own



For Uesugi, an ideal state exists in unity between the emperor and the people, and no obstacle should be placed between them.<sup>42</sup> In this hierarchical structure, not only individuals but also government is subjected to *kokutai*. “When *kokutai* changes, a country will disappear. Change of *seitai* (government) is merely a matter of convenience, determined by considerations of loss and benefit depending on the social and political circumstance of the time (*jisei*).”<sup>43</sup> In his definition, *kokutai*, the national essence, transcends government.

Therefore, Uesugi criticises both *hanbatsu* and the existing political parties, since they are trespassing on this unity. His view anticipates Kita Ikki’s call for drastic reform of the country’s polity, including the termination of party politics, which was promoted by young military officers in their attempted coups in the 1930s. And it anticipates the totalitarian notions of the New National Unity Movement (*taisei yokusan undō*) and the *Kokutai no Hongi* in the late years of that decade. Uesugi’s thought reveals the resilient core ideas of emperor-centred national unity: the denial of popular sovereignty, the emphasis on obedience, the rejection of “heresy”, particularism (the emphasis on *kokutai*), anti-parliamentarianism, and anti-liberalism.

In this emphasis on ideas of national unity, ethnic pride, and antipathy to Parliament, Uesugi’s views have much in common with those that underlie European fascism. And yet his view of a national unity based on the people’s total subjugation to the emperor contrasts with the emphasis on the role of a dominating party by his European counterparts.<sup>44</sup> In Japanese totalitarian thinking, party leadership is less important than the emperor’s absolute authority and his subjects’ unswerving loyalty to him. It is these totalitarian tendencies which most clearly clash with Minobe’s ideas of the legal state.<sup>45</sup>

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recognition alone, *kokutai* will be determined and the foundation of the state will be laid down”. Uesugi Shinkichi, “Kokutai to Kenpō no Unyō”, in Hoshijima Jirō (ed.), *Saikin Kenpōron*, pp. 245-6.

<sup>42</sup> Thus he says, “The members of Parliament who come from all across the country should try to offer the best possible policy they can think of to the emperor so that he can reign over the country, and should carry out their duties granted by the emperor with utmost sincerity” (*ibid.*, p. 285).

<sup>43</sup> *ibid.*, p. 250.

<sup>44</sup> See Maruyama, “The Ideology and Dynamics of Japanese Fascism”, in *Thought and Behaviour in Modern Japanese Politics*, pp. 25-83.

<sup>45</sup> Thus Nakamura Yūjirō interprets the Minobe-Uesugi debate as a clash between universalism and particularism. Minobe tries to interpret the Meiji Constitution in terms of universal principles and constitutionalism, while Uesugi emphasises Japanese particularism and the unity of politics and national rites (*seikyō itchi*). See his “Minpō Ronsō to Minobe-Uesugi Kenpō Ronsō”, in Miyakawa



To better appreciate Uesugi's imperial absolutism and his ideas of social order based on "prescribed hierarchy" and status (*bun*), we need to examine more closely the formation and change of modern Japanese nationalism that unfolded around the role of the emperor. For in doing so we will understand more clearly the forces Minobe chose to engage. Two issues are relevant here. One is how Japanese historians dealt with the dual structure of political authority, the emperor and the shogun, before the Restoration, and how that historiography affected the Meiji political structure. The other is how Japanese neo-Confucianists responded to what they saw as the two looming "national" crises, the threat of the West and the domestic weakness of the country, in the early nineteenth century.<sup>46</sup> The two are essential to the formation of the idea of national unity, and to the traditional ideas Minobe sought to contest.

Ideologically then the Meiji Restoration has its antecedents in the dual structure of traditional political authority, emperor and shogun. Indeed it was Tokugawa Mitsukuni, the seventeenth century lord of the Mito domain and a grandson of Tokugawa Ieyasu, who initiated the compilation of the *Dai Nihonshi* [*History of Great Japan*], a comprehensive account of Japanese history starting from the country's origins and the legendary Emperor Jimmu. Nevertheless, through the project, the imperial family emerged as a moral ideal that represented the country's existence and continuity, thus transcending political events. The Mito scholars' articulation of the dual structure, in which an emperor was defined as the real head of state and the shogun as his "regent", portrayed the bakufu government as a temporary authority and thus made it vulnerable to replacement when calls for national unity grew. Thus, by around 1860,<sup>47</sup> the project, which had begun in 1657 and was still in progress, had helped foment Japanese nationalism, synthesising neo-Confucianism, Shinto, and *kokugaku* into the powerful ideology of "*sonnô jôi*". Restoration nationalism was a product of such interaction, and no group was more responsible for its articulation than the Mito scholars.

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Tôru, Nakamura Yûjirô, and Yoshida Hikaru (eds.), *Kindai Nihon Shisô* (Tokyo: Aoki Shoten, 1963), pp. 67-96.

<sup>46</sup> J. Victor Koschmann, *The Mito Ideology: Discourse, Reform, and Insurrection in Late Tokugawa Japan, 1790-1864* (Berkeley: University of California Press, 1987), p. 45.

<sup>47</sup> A group of Mito samurai assassinated the top bakufu official Ii Naosuke in 1860 at the Sakuradamon gate of Edo Castle.

Thus Mito historiography's emphasis on the imperial line and its treatment of the dual structure of political authority has had a lasting influence on Japanese thinking on government.<sup>48</sup> It is discernible in the Meiji Constitution as the parallel presence of imperial orders (*chokurei*) and laws (*hō*). The problem is not the parallel presence itself, but the tendency, both ideological and institutional, for the emperor to represent higher authority than government. Implicit in Uesugi's objections to Minobe's legal state is the transgressive potential of unaccountable power that remained such a problematic aspect of Japanese government right until the end of World War II. And Uesugi's *meibunron* is in the direct line of Mito thought and bias.

Two scholars in particular, Fujita Yūkoku (1774–1826) and his disciple Aizawa Yasushi (1782–1863), were most articulate and influential in the formation of the Mito ideology. Fujita and Aizawa both belonged to the late Mito school, and each headed the Mito Historiographical Institute (Shōkōkan), which was responsible for compiling the *Dai Nihonshi*. Both had an acute sense of crisis within late Tokugawa society, sensing financial depletion, the slackening of samurai morale, and low agricultural productivity accompanied by natural disasters and famines. Nascent imperial absolutism and *meibunron* were their response to what they saw as “evidence of social disintegration”.<sup>49</sup> How to maintain social cohesion became a major concern for both of them, and the imperial family emerged as a source of natural order and social unity. Thus Fujita affirms in the *Seimeiron* [On the Rectification of Names] of 1791,

If the shogunate reveres the imperial house, all the feudal lords will respect the shogunate. If the feudal lords respect the shogunate, the ministers and officials will honor the feudal lords. In

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<sup>48</sup> However the attitude of treating the emperor as an absolute and sacred monarch can be traced back to Yamazaki Ansai (1618–1682), the founder of “Confucianised Shinto” (*Suika Shinto*). “Yamazaki's synthesis for seventeenth-century ideology is of the greatest importance for an understanding of late Tokugawa Mito thought. That is particularly so because, by the end of the eighteenth century, Yamazaki's epigones in the Kimon school of neo-Confucianism had secured a strong position in the Bakufu College and through the Kansei Reforms had established a kind of orthodoxy. Many Kimon ideas found their way into memorials written by Aizawa Seishisai [Yasushi] and other Mito reformists in the early to mid-nineteenth century” (Koschmann, *ibid.*, p.8). “Underlying this [Yamazaki's] social agreement with respect to hierarchy was an ontology that equated mental and cosmic states. Virtues that were innate to man, such as reverence and loyalty, were also inherent to the makeup of the universe and would therefore manifest themselves spontaneously in social order. The central virtue was reverence (*kei*); beyond that, loyalty. Rebellion was unthinkable” (*ibid.*, p.10). Also see Herman Ooms, *Tokugawa Ideology* (Princeton, N. J.: Princeton University Press, 1985), pp. 218-9 and p. 248.

<sup>49</sup> See Koschmann, *op. cit.*, pp. 29-34.

this way high and low will give support to each other, and the entire country will be in accord. What qualifications enable the shogunate to unite the country? Above, [it is] its reverent attitude toward the emperor, and below, its protective treatment of the feudal lords. Its rule, however, is nothing more than the exercise of the emperor's sovereignty...<sup>50</sup>

For Yûkoku, although he is by no means a fanatic imperialist, the emperor is an established authority immune to censure. He emphasises "prescribed" social hierarchy in order to promote social and political reform without upsetting the status quo. For him the emperor is associated with "a changeless, natural order", and this order is sacred. Emphasis on social order is necessary to avoid "the Chinese Confucian tradition of legitimate dynastic overthrow (*ekisei kakumei*)".<sup>51</sup>

Thus Yûkoku emphasises the maintenance of names and status (*meibun*) for pragmatic purposes. "How essential it is in a state [*tenka kokka*] that names and status distinctions [*meibun*] be correct and rigid. They must be as unchanging as Heaven-and-Earth itself! In the beginning there was Heaven-and-Earth, and then the ruler and his subjects. Sovereign and subject set the precedent for high and low in the social order. Once high and low were distinguished, there was a base for rites and ceremonies."<sup>52</sup> Yûkoku's primary concern is to reform the domain, far from ousting the bakufu. Thus *meibun* represents a "natural" order, which must be restored.

According to Bitô Masahide, *meibunron* is a Japanese offshoot of Chinese neo-Confucianism. The Zhu Xi (or Chu Hsi) school of Confucianism, generally called neo-Confucianism, was founded by Zhu Xi (1130–1200) in Song Dynasty China (960–1279). He built his philosophy on two contrasting concepts, *li* (*ri* in Japanese) and *qi* (*ki* in Japanese). The former means "principle" or "reason", and the latter "ether" or fundamental components of a material. Zhu emphasised the role of

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<sup>50</sup> Quoted in Herschel Webb, "The Development of an Orthodox Attitude Toward the Imperial Institution in the Nineteenth Century", in Marius B. Jansen (ed.), *Changing Japanese Attitudes Toward Modernisation* (Princeton, N. J.: Princeton University Press, 1965), p. 177. Webb asserts that the full identification of the emperor with state power did not occur until the Meiji Restoration. "There is nothing in the long line of imperial loyalist thought which tended to so close an identification of the throne with the state power" (*ibid.*, p. 189).

<sup>51</sup> See Koschmann, *op. cit.*, p. 41. Koschmann quotes H. D. Harootunian, *Tokugawa Restoration* (Berkeley: University of California Press, 1970), p. 15, to the effect that the emperor was now transformed from a "historical" into a "political" principle.

<sup>52</sup> Koschmann, *op. cit.*, p. 43.

principle; it is logic that determines the way in which a material exists. A rationalism that respects principle is one important character of neo-Confucianism.<sup>53</sup>

The Zhu Xi school of Confucianism was introduced into Japan in the thirteenth century. Yet even as it underwent drastic transformation in Japan over time, it is most clearly identifiable in *meibunron*, the doctrine that urged individuals to honour one's social position (*mei*) and role (*bun*).<sup>54</sup> In Chinese, *mei* (name) is aligned with ideas and ideals, and *jitsu* with reality and the material. However, such a dichotomous view was transformed in Japan. Now the name was no longer associated with ideals, but with external norms one was supposed to obey. In this view, reality (*jitsu*) is demoted to anything that would threaten those norms. Instead of the neo-Confucian emphasis on the need to subjugate reality by means of the ideal (thereby ensuring the Mandate of Heaven) social norms are now made paramount. Thus, according to Bitô,

Neo-Confucianism endorses a moral training that emphasises observation and action in each case, and also the need to find a universal principle that encompasses those individual cases. In contrast, *meibunron*, advocated by Yûkoku and others, puts more emphasis on the diversity of roles that individuals play in society and the differentiation of moral obligations (*dôtokuteki saimu*) attached to those roles... It is more concerned with the conditions of different roles, *bun*, than with the universality of *li* (principle or reason).<sup>55</sup>

In this way the two views clearly differ in their approach to individual and society: for where Neo-Confucianism emphasises the individuals that constitute society, *meibunron* emphasises the social system. Bitô cautiously points out that the former is more sympathetic to social change, yet as he himself admits, this is a very simplistic view of Japanese neo-Confucian thinking.<sup>56</sup> And as Koschmann demonstrates,

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<sup>53</sup> Nevertheless, its dichotomous world view, subjecting every object and material to *li*, principle, created rigid stoicism. It tended to undermine human feelings, which were labelled a distraction in realising one's *li*. Such "rationalism" suited the rulers of the time, and the new Confucianism became official teaching in China in the fifteenth century, and spread to its neighbouring regions and countries in East Asia, including Korea and Japan. For neo-Confucianism, see Shimada Kenji, *Shushigaku to Yômeigaku*, Iwanami Shinsho, 1967, and also Yamai Yô and Bitô, "Shushigaku", in Kokushi Daijiten Henshû Iinkai (ed.), *Kokushi Daijiten*, vol. 7 (Tokyo: Yoshikawa Kôbunkan, 1986), pp. 369-71.

<sup>54</sup> See Bitô, "Seimeiron to Meibunron", in Emura Eiichi, Kanô Masanao *et al.* (eds.), *Kindai Nihon no Kokka to Shisô* (Tokyo: Sanseidô, 1976), pp. 8-9.

<sup>55</sup> *ibid.*, p. 20.

<sup>56</sup> Various Confucian scholars were attracted to the rationalism of the Zhu Xi school, including Nakae Tōju and Arai Hakuseki. In the eighteenth century, emphasis on the stoicism of the doctrine declined,



Mitogaku as an ideology did indeed prompt the people, samurai and farmers, eventually to challenge the Tokugawa government. On the other hand Tokugawa Ieyasu, the founder of the Tokugawa government, himself fully understood he had to support the Mandate of Heaven in order to legitimise his regime vis-à-vis the court.<sup>57</sup>

Nevertheless, ideas of the social order based on one's *bun* articulated in Yûkoku's *meibunron* are shared by Uesugi, and then assimilated into the *Kokutai no Hongi*. However this does not mean that Uesugi was an uncritical follower of Yûkoku's thought, for he too interpreted *meibunron* to justify his monistic views. Thus for Uesugi, national prestige is of paramount importance and the individual should strive to develop the national spirit in a very competitive world. Such an expansionist position is either absent or only implicit in Yûkoku's thought.<sup>58</sup>

Uesugi's absolutism, and by the same token Minobe's constitutionalism, therefore have their antecedents in the sense of malaise and inadequacy perceived by such Mito scholars as Aizawa Yasushi, whose *Shinron* was written in response to the promulgation of the "Order to repel foreign ships" (*Ikokusen uchiharai-rei*) in 1825.<sup>59</sup> Amid a growing sense of national crisis, national unity was now increasingly emphasised. And it is difficult to imagine that the bakufu would have been ousted if it had been seen to be dealing successfully with that crisis. Hence, as we have seen, the "regent" was much more vulnerable to replacement, when threats were perceived from outside and calls for national unity grew.

Aizawa, one of Yûkoku's disciples, also contributed to the calculated "elevation" of the reigning emperor as the embodiment of moral goodness, and the

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and more pragmatic thinkers emerged, such as Itô Jinsai (1627–1705) and Ogyû Sorai (1666–1728). For Sorai's criticism of neo-Confucianism and his view of objective social order, see Maruyama, "Soraigaku ni okeru Senkai", *Nihon Seiji Shisôshi Kenkyû* (Tokyo: Tokyo Daigaku Shuppankai, 1952), reprinted 1989, pp. 208–22. The influence of the Wang Yangming school, which was anti-scholastic emphasizing the union of thought and action, is also recognisable in the thought of pre-Restoration revolutionaries. Moreover Rangaku (Dutch Studies), "one important sidestream of the Neo-Confucian tradition", provided the intellectual ground for absorbing certain Western ideas (see Minear, *op. cit.*, pp. 162–3).

<sup>57</sup> For the debate about legitimacy during the Edo period, see Kate Wildman Nakai, "Tokugawa Confucian Historiography: The Hayashi, Early Mito School and Arai Hakuseki", in Peter Nosco (ed.), *Confucianism and Tokugawa Culture* (Princeton, N. J.: Princeton University Press, 1984), p. 79, and also Matsumoto Sannosuke, *Tennôsei Kokka to Seiji Shisô*, pp. 142–3.

<sup>58</sup> For Uesugi's nationalistic views, see Miller, *Minobe Tatsukichi*, p. 34.

<sup>59</sup> "Although ostensibly written solely for the inspiration and enlightenment of his teacher Fujita Yûkoku and his lord Tokugawa Narinobu (1797–1892), the book-length document soon 'leaked out' and was widely disseminated in various versions by samurai activists" (Koschmann, *op. cit.*, p. 56).

symbol of national unity. As with Yûkoku, Aizawa's concern was how to reform politics and society without upsetting the existing social order. Yet because Aizawa's *Shinron* was written 34 years after Yûkoku's *Seimeiron*, his emphasis on national crisis was more acute. Combining neo-Confucianism, the Confucianised Shinto developed by Yamazaki Anzai, and *kokugaku*, Aizawa emphasises filial piety and loyalty as fundamental to social order. His ideal order is presided over by the emperor, because the emperor is a direct descendant of Amaterasuômikami. The "unbroken" blood connection is the justification for the emperor's legitimacy as the sole person capable of making the people be "of one mind". For him the emperor is the fundamental concept in a pragmatic theory of national unity.<sup>60</sup>

Inadvertently Aizawa weakens the moral foundations of the Tokugawa bakufu. Yet more importantly, because of his concern with social cohesion, he is particularly intolerant of anything that can be said to threaten the unity of the state.<sup>61</sup> Thus he advocated rejecting foreigners (*jô-i*), endorsing the country's 200-year-old policy of seclusion. It is this intransigence that passes into Uesugi. For both Hozumi and Uesugi would anathematise Minobe's constitutional views, and Minobe was only too aware of the burden of tradition he had to confront.

Nevertheless some ideas central to Yûkoku and Aizawa were unpalatable to Uesugi. Thus in Aizawa's theorisation of the emperor's superiority, "the popular will" is essential. He says, "It is not by intimidating the people, and forcing them into obedience for one dynasty at a time, that an imperial sovereign is able to pacify the four seas, govern in peace for extended periods, and preserve the realm in perfect tranquillity. His only bulwark is that the people should be of one mind, love their ruler, and harbor no desire to separate themselves from him."<sup>62</sup> From this emphasis

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<sup>60</sup> Koschmann, *ibid.*, p. 66-7.

<sup>61</sup> Aizawa characterises social problems in two ways: problems that occur with the passing of time, and problems caused by heresy. The first is inevitable, but the second must be contained. "Aizawa's history writing also follows the common Tokugawa practice of adhering to a cyclical concept of change, often combined with the assumption that structures inevitably deteriorate over time. This degenerative concept of the historical process provides the framework for Aizawa's explanation of how the Japanese polity reached its contemporary state of disrepair. The second major category of abuses plaguing the nation is the evil of heresy... Religion...must serve the cause of unity and obedience to duly constituted authority if it is to find justification.... Whereas changes in the momentum of time (*jisei no hen*) have to do with institutional relationships among land, people and authority, the issue of heresy (*jasetsu no gai*) focuses on the problem of religion. Yet the remedy for both must be sought in *kokutai* (the national essence)" (*ibid.*, pp. 61-4).

<sup>62</sup> Quoted by Koschmann, *ibid.*, p. 67.



on “the people”, he advocates a new relationship between authority and the populace. Thus he says, “To make the people ignorant and the soldiers weak may be a clever plan from the point of view of politics. But where there is benefit, there is also damage, so that strategy must now be reformed.”<sup>63</sup> Koschmann remarks of this that Aizawa here “explicitly advocates a flexible practicality as the best policy in a world of incessant change”.<sup>64</sup>

It seems true then that *meibunron* ideology came relatively late in the Tokugawa period, and became popular only when the bakufu system began to decay. Using the Confucian discourse with which he was familiar, Yûkoku questioned the legitimacy of the status quo while identifying its inability to deal with social and political problems. Yet as Herschel Webb points out, the emperor was not yet linked to any concrete state power.<sup>65</sup>

Thus it is extremely important to remember that the *meibunron* associated with Meiji neo-Confucianism differed from that of Yûkoku and Aizawa in intention and emphasis. Crucially it was reinterpreted by those who were then in government and used expediently as an instrument. Certainly Yûkoku anticipates Uesugi’s views of a hierarchical social order, in which high and low are connected through “reverence”, “respect” and “honour”. Yet at the same time, Yûkoku’s question “What qualifications enable the shogunate to unite the country?” echoes Minobe’s “Why do we have to obey the State?”<sup>66</sup>, a question he in turn had learned from Jellinek but nevertheless made his own. Thus *meibunron* polemic in the late Tokugawa and early Meiji periods grapples with questions of legitimate political authority, from which both major principles of the Meiji Restoration, “*kôron*” (public opinion) and “*sonnô*” (revere the emperor), derive.<sup>67</sup> Yet if the divided trajectories of later political debate are implicit in it, it does not project the later triumph of absolutism.

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<sup>63</sup> Quoted by Koschmann, *ibid.*, p. 79.

<sup>64</sup> *ibid.*, p. 79.

<sup>65</sup> Webb, *op. cit.*, pp. 177, 189.

<sup>66</sup> Minobe, *Nihon Kenpô* (Tokyo: Yûhikaku, 1921), p. 148.

<sup>67</sup> For a study of the concepts of legitimacy in the late Tokugawa and early Meiji period, see Matsumoto, “Bakumatsu ni okeru Seitôsei Kannen no Sonzai Keitai”, in his *Tennôsei Kokka to Seiji Shisô*. Maruyama Masao also examines the genesis of the “*kôron*” ideology. See his *Chûsei to Hangyaku* (Tokyo: Chikuma Shobô, 1992), pp. 22-7.

Thus the Meiji Restoration was carried out in the name of the emperor, yet he by no means represented absolute authority. Rather he symbolised a moral authority fairer and thus more legitimate than that of the Tokugawa government. In this way the Charter Oath projects an image of the emperor as the moral and symbolic leader of the country's quest for modernisation. Even the *Boshin Shôsho* of 1908 preserves this practice, portraying the emperor as one who spearheads the country's advancement based on the co-operation of his subjects. In the *Kokutai no Hongi* of 1937, however, the emperor no longer asks the people for support, and is excused from explaining his reign. His authority is absolute and legitimate, historically and culturally, and linked firmly with the idea of the state. Sometime between the *Boshin Shôsho* and the *Kokutai no Hongi*, a radical metamorphosis of the emperor's political role had taken place. With the demise of party politics, the emperor had emerged as the head of the monolithic state.

In a rapidly changing society, where ideas that natural law could provide were constantly challenged, it is easy to see why many Japanese, including Hozumi and Uesugi, were attracted to such a synthetic view of the emperor. The pervasive portrayal of a country in constant danger, frequently reinforced by government policy statements, including imperial rescripts, moved the emperor to the status of myth. And the myth flourished at a time when the constitution's flawed arrangements lent themselves to the purposes of reactionary opinion. Minobe's defence of the claims of the legal state and of constitutional government was thus both provoked and undermined by the emperor's dual role, by government's constant resort to the rhetoric of national crisis, and by the accommodatory aspects of traditional political thought.

Nevertheless, throughout his career, Minobe sought to appraise both policy and institutions in the light of his own vision of national well-being and the rights of the individual. Thus, if Uesugi's reinterpretation of *meibunron* marks a shift in the evolution of Japanese nationalism, a shift from neo-Confucian justification of social and political change to rigid endorsement of political conformity, so by the mid-1930s, when nationalism had been thoroughly mobilised in the name of *kokutai*, Minobe's liberal views suddenly found themselves serving as defining principles for such nationalism, but only through their negation.

### 2.3. From organicist theories to constitutionalism: the denial of absolute power

The essence of Minobe's constitutional theory is that no political power is absolute and limitless. This claim forms the foundation of his conceptualisation of the legal state. At the same time Minobe's constitutional views are often associated with the German concept of *Staatslehre*, translated as *kokkagaku* (the theory of the state), which has been criticised as a defence of statism by the post-war generation of political scientists.<sup>68</sup> Notions of *Staatslehre*, organicist and holistic, became part of the mainstream of legal and political thought in Japan after the promulgation of the Meiji Constitution. The prevailing interpretation of organicist theories is that they were devised to defend monarchical authority.<sup>69</sup> Proclaiming the supremacy of the state, they played an "undemocratic" role in defending the monarch against the increasingly assertive bourgeoisie in political and legal debate in Germany.

However, organicist theories vary in emphasis, and those concerned with the protection of individual rights are closer to constitutionalism. Furthermore natural law elements are discernible in some theories. Minobe's theory is organicist, and yet natural and common law thinking is recognisable in his vision of constitutional government. This section aims to clarify Minobe's constitutional views, and to show how far he departed from his predecessors and colleagues in his interpretation of organicist theory.

Organicist theories of the state reflect two prevailing concerns of Europe after the French Revolution: an emphasis on unity, and a search for new social principles in a "post-Christian" world. Recent social change is implicit in the theories' emphasis on the whole, which is more than a collection of individuals, and the role of law. Romanticism, nationalism, and the idea of social progress (which was prompted by the Industrial Revolution and the development of science) also entered into

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<sup>68</sup> See Miller, *Minobe Tatsukichi*, p. 14. Miller notes that Minobe's constitutional views "emerged from and in large part remained within the limits of the official political science of the Imperial University, a political science which in Rôyama's words, 'neither saw with its own eyes, nor stood on its own feet. Rather it depended on *Staatslehre*.' It was not an independent science but an auxiliary of the state bureaucracy in administration and legislation."

<sup>69</sup> See Miller, *ibid.*, p. 10, and Miyazawa Toshiyoshi, "Minobe Sensei no Gyôseki", *Nihon Kenseishi no Kenkyû*, p. 318.

theories of the state. The plethora of theory reflects the breadth of debate about the relationship between authority and the individual at a time of fundamental change in society.

Theories of the state were pursued most vigorously in German states from the late eighteenth century, when national unity and nation-building became prime concerns of many intellectuals, including legal experts. In time they were developed into a vast body of knowledge as *Staatslehre*, which the Japanese enthusiastically tried to master. In 1887, a society for promoting study of the theory of the state (*kokkagakkai*) was established within the Tokyo Imperial University. Prime Minister Itô Hirobumi was among its founding members. Political science and law were studied as part of *Staatslehre*.

Of the organicist theories introduced into Japan through *Staatslehre*, the schools of historical law and of legal positivism were most influential.<sup>70</sup> Japanese scholars, including Minobe and his opponents Hozumi and Uesugi, all learned the idea of national sovereignty from these two schools. Nevertheless, Minobe's organicist theory markedly differs from the theories advocated by his opponents. Minobe's position becomes clearer if we distinguish between the different organicist viewpoints.

Friedrich Savigny (1779–1861) is often described as the founder of the historical school. Reflecting the emerging German national consciousness in response to the wars against Napoleonic France, Savigny challenged the hegemony of natural law, with its emphasis on rationalism, universalism, and individualism. He saw law as historical and peculiar to a people, so that law is “discovered” not “made”. Thus he tried to find “an organic principle” in law through examination of history.<sup>71</sup>

On the other hand, the legal positivism established by such scholars as C. F. von Gerber (1823–1911) and Paul Laband (1838–1918) provided Japanese legal

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<sup>70</sup> See Minear, *Japanese Tradition and Western Law*, p. 35.

<sup>71</sup> For Savigny “All law is originally formed in the manner in which... customary law is said to have been formed: i.e., that is first developed by custom and popular faith, next by jurisprudence, – everywhere, therefore, by internal silently-operating powers, not by the arbitrary will of a law-giver” (quoted by Minear, *ibid.*, pp. 36-7). Thus Savigny opposed codifying German law modelled after the French civil code. For a brief description of the school of historical law in Germany, see Ernest Barker, “Translator’s Introduction”, in Otto Gierke, *Natural Law and the Theory of Society 1500-1800* (Boston: Beacon Press, 1957), pp. I-liv.



experts with the concepts of state and constitution. Sovereignty (*shuken*) and the legal person (*hōjin*) are two key concepts developed by the German positivists that entered into Japanese legal discourse.<sup>72</sup> Here the state is defined as a legal person, to which sovereignty is attributed. This formulation shifts the source of supreme political authority from a monarch or a group of people to a quasi-metaphysical state. Richard Minear quotes Laband as saying “the legal personality of the state consists in the fact that the state has its own rights of rule for the fulfilment of its tasks and duties”. Accordingly “the will of the state is distinct from the will of its members”, and “it is not the sum of their wills, but a will independent of them”. Thus sovereignty is no longer a matter of personal authority, but of an “indivisible” Leviathan.<sup>73</sup>

Questions remained, however, as to how the rights of the metaphysical state could be defined vis-à-vis the traditional concept of the rights of the monarch and the rights of the individual. And it was not until the late nineteenth century that a new generation of European legal scholars began to discuss “the needs and demands of social forces” in the theory of the state. Most prominent of all those who then developed the theory of individual rights based on positivist tradition was Georg Jellinek (1851–1911), and it was to Jellinek, as we will see, that Minobe eventually turned. Most significantly, as Miller points out, where “Laband was concerned primarily with the formal law... it remained for Jellinek to broaden the focus of law to permit serious consideration of the social forces Laband placed outside the law”.<sup>74</sup>

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<sup>72</sup> Nevertheless when the Japanese began to write their own civil code in 1870, it was the French code that they turned to. The government had invited the French legal expert Gustave Emile Boissonade, in 1873, for consultation on the code. Boissonade stayed in Japan until 1895 and taught French law and Roman law at the Justice Ministry, the Dajōkan, and other government institutions. Notions of the legal person, social rights, and the distinction between public law and private (civil) law thus entered into Japanese legal discourse from the French. Yet for Minobe’s generation the German system, which shared the Roman law tradition with the French, was most influential. For the influence of French law on the Japanese legal system, see Ōtsuki Fumihiko, “Mitsukuri Rinshō kunsen” (1907), in Katō Shūichi and Maruyama Masao (eds.), *Honyaku no Shisō, Nihon Kindai Shisō Taikei*, vol. 15 (Tokyo: Iwanami Shoten, 1991), pp. 303-15, and Boissonade, “Hōritsutai Kōgi” (1880), in Matsumoto Sannosuke and Yamamuro Shinichi (eds.), *Gakumon to Chishikijin, Nihon Kindai Shisō Taikei*, vol. 10, 1988, pp. 292-388. The latter is a translated summary of Boissonade’s lectures.

<sup>73</sup> Minear summarises Laband’s legal positivism as follows: (1) a definition of law as sovereign command, (2) an absolute dependence on reason for the creation of a science of law, (3) the separation of law from ethics, (4) the positing of a personality for the state, and (5) a denial of fundamental liberties except as specifically guaranteed by law (rights by reflex). See Minear, *op. cit.*, pp. 40-9.

<sup>74</sup> Miller, *Minobe Tatsukichi*, p. 51.

Nevertheless, although German theories started to dominate studies of law and political science in Japan around 1890, the first organicist theory introduced into Japan was not positivist but strongly rooted in the tradition of natural law, emphasising reason and individualism. Thus in 1872 Katô Hiroyuki (1836–1916) translated Bluntschli's *Allgemeines Staatsrecht* [*The Theory of the State*]. Bluntschli too emphasised “the cohesion of the nation”. And using the common metaphor of a living creature he theorised that “in the State spirit and body, will and active organs, are necessarily bound together in one life. The one national spirit, which is something different from the average sum of the contemporary spirit of all citizens, is the spirit of the State; the one national will, which is different from the average will of the multitude, is the will of the State.”<sup>75</sup> Bluntschli's fusion of collective vitality and national unity was in tune with what was already enshrined in the Charter Oath. For it offered the Meiji leaders and intellectuals a utopian vision of the state and society where collective and personal aspirations complemented each other.

However, Bluntschli's organicist theory was founded on a delicate balance between collectivism and individualism. And when he says that the state has “an external growth” he anticipates the arrival of imperialism. At the same time individual freedom is central to his theory. For him the state is “an arbitrary work of individual freedom”.<sup>76</sup> “[The] modern mind does not begin with the state, but with the individual.”<sup>77</sup>

Thus Bluntschli criticises the German historical school for mythologising the state at the expense of individual rights. He criticises Hegel: “Even Hegel in his theory of Law (*Rechtslehre*) paid more regard to the historical formation of states than the earlier theories of natural law. He supposed indeed that he found in the history of the world a dialectical process of reason. The ‘existing’ appeared to him ‘rational’. His theory especially glorified the Prussian state, as it then existed, still

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<sup>75</sup> J. K. Bluntschli, *The Theory of the State*, pp. 17-20. “This organic nature of the State has not always been understood... It is the especial merit of the German school of historical jurists to have recognised the organic nature of the Nation and the State. This conception refutes both the mathematical and mechanical view of the State, and the atomic way of treating it, which forgets the whole in the individuals... and so too the nation is not a mere sum of citizens, and the State is not a mere collection of external regulations” (*ibid.*, pp. 18-19).

<sup>76</sup> “The State indeed is not a product of nature, and therefore it is not a natural organism; it is indirectly the work of man” (*ibid.*, p. 19).

<sup>77</sup> *ibid.*, p. 65. Even the absolutist Hobbes and the radical Rousseau are in agreement in this respect, according to Bluntschli.



absolute although governed in a spirit of public duty. He defended the power of the monarchy, and did not care for the advance of constitutional freedom.”<sup>78</sup> These criticisms will find their echo in Minobe’s criticisms of Hozumi and Uesugi.

Bluntschli also endorsed the power of law to link the common life and the State. Thus the constitution is “the articulation of the body politic”.<sup>79</sup> “Man has his rights as an individual, private law is sharply distinguished from public law, and is rather recognised than created by the State, rather protected than commanded.... The sovereignty of the State is constitutionally limited.”<sup>80</sup> Thus Bluntschli’s organicist and constitutional theories champion the rights of the individual and endorse the philosophy of natural law. Katô’s translation of 1872 became a best-seller.<sup>81</sup>

In this way, the earlier organicist theories some Japanese came to know were accompanied by the concept of inalienable rights, which was promoted by the so-called enlightened (*keimô*) thinkers, including Nishi Amane, Fukuzawa Yukichi, and Katô, through their activities at such private societies as Meirokusha. Inalienable rights were a prominent concept in the *bunmei kaika* (civilisation and enlightenment) movement,<sup>82</sup> and were then taken up by *jiyûminken* activists in their confrontation with the government.

Along with the touchstone of progress, these organicist theories were highly influential for post-Restoration Japanese political leaders and intellectuals in shaping their views of the state as a new political community. In their frantic efforts to introduce Western legal and economic systems, they needed a suitable theory to envisage a new “objective” social order. However, as consolidation of state power

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<sup>78</sup> *ibid.*, p. 73.

<sup>79</sup> *ibid.*, p. 20.

<sup>80</sup> *ibid.*, p. 59.

<sup>81</sup> A list of annual best-sellers between 1861-1998 is provided in Nagahara Keiji (ed.), *Iwanami Nihonshi Jiten* (Tokyo: Iwanami Shoten, 1999), pp. 1773-84. Katô was influenced by Hobbes, and says in a draft of *Shinsei Taii*, published in 1870: “Why cannot people live safely with the State?... Firstly, people have inherent rights. This means that every person can act with free will and without being restricted by others. Those rights are the ultimate treasure for people since their birth. However, if people fail to create the State and live separately with each other like dogs and cats, they would waste that treasure. More importantly, because people differ from each other in physical strength and spirit, the weak would be constantly controlled by the strong, and the meek would be harassed. No one would feel safe because a strong person might be defeated by someone stronger. Thus the people might not safely maintain their free rights. This is the major reason why people have to form the State” (quoted by Matsumoto Sannosuke, “Tennôsei Hôshisô” (part II), p. 22).

<sup>82</sup> The first volume of Fukuzawa’s *Gakumon no Susume*, based on Wayland’s *Moral Science*, and a translation of John Stuart Mill’s *On Liberty*, were published in 1872. A translation of Smiles’s *Self*

proceeded through the introduction of various institutions, including that of the legal system, the initial emphasis in the organicist theories shifted from inalienable rights to national unity. Thus Katô publicly recanted his previous adherence to the idea of inalienable rights in 1881.<sup>83</sup> In a crucial development, the organicist theories were now co-opted so as to strengthen the role of the emperor and to justify bureaucratic control of state affairs.

Ishida Takeshi attributes this transformation to the initial absence of an absolute state and the weak sense of civil liberties in Japan. In Germany, organicist theories were formulated as an antithesis to the idea of civil rights, which itself had stemmed from people's conscious resistance to the absolute state. Since most Japanese had not recognised political authority as an "apparat" until the Restoration, the concept of civil liberties was not fully developed. Yet in a society without a strong emphasis on civil liberties, organicist theories were now placed at the service of an authoritarian state, neither absolutist nor constitutional and with the true centres of power obscured behind the presence of the emperor.<sup>84</sup>

Minobe's persistent denial of absolute power, however, demonstrates the lasting influence on him of the organicist theories that emphasised inalienable rights as in Bluntschli. His Emperor-as-Organ theory is an outgrowth of such earlier organicist ideas, modified to take into account the presence of the emperor.<sup>85</sup>

Yet it must be said also that Minobe had his predecessors in embracing German-origin "organicist" theories. Most influential of all was his mentor Ikki Kitokurô. Ikki also believed that sovereignty resided in the state, not in the emperor as Hozumi claimed. However, Minobe and Ikki differed in their attitudes towards law. Minobe argued that civil liberties could not be violated unless sanctioned by law, while Ikki insisted that the people could not refuse orders unless the law allowed it. Their difference in emphasis stems from their different views of political authority

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*Help* was published in 1871. They were widely read. Herbert Spencer's *Social Statics* was also translated and published in 1881, as well as Rousseau's *The Social Contract*.

<sup>83</sup> For Katô's *tenkô*, see Matsumoto Sannosuke, "Katô Hiroyuki", *Shisô no Kagaku*, May 1962, pp. 34-9.

<sup>84</sup> Ishida Takeshi, "Nihon ni okeru Kokka Yûkitaisetsu", *Nihon Kindai Shisôshi ni okeru Hô to Seiji* (Tokyo: Iwanami Shoten, 1984), pp. 161-8.

<sup>85</sup> The bibliography of Minobe's *Nihon Kenpô* of 1921 includes Bluntschli (*Lehre vom modernen Staat* of 1886 and others), Dicey (*Introduction to the Study of the Law of Constitution*, seventh edition, 1908), and H. J. Laski (*Studies in the Problem of Sovereignty* of 1917, and *Authority in the Modern State* of 1918), as well as Georg Jellinek (*Allgemeine Staatslehre* of 1900 and others).

defined as “the sovereignty of the state”. Ikki argues that “the subjects can refuse a state order which is not sanctioned by law, only if the state recognises that this is a case in which legal justification is necessary to order the subjects to act in a certain way. I cannot accept the assertion that the state can issue an order to the people only if it is based on law, except for when the Constitution stipulates otherwise.”<sup>86</sup>

Clearly here Ikki commits himself to the “unlimited” power of the state so that the people can defy it only if law allows them to do so. For Ikki, the sovereignty of the state is a corollary of state authority. Thus he realigns the centre of power from emperor to State, but does not question the legitimacy of political power in relation to the people. For Minobe, however, the basic component of society is the people, and law is necessary to protect their liberties. And he assumes that state power is not limitless and sacrosanct but subject to legal restrictions as well as practical restraints.<sup>87</sup> Here Minobe departs from his mentor in his attempt to restrict the operation of political powers.

Minobe’s scepticism about absolute state power had been present from the very beginning of his professional career and is present in his first academic paper published in 1889. At that time the question of how to distinguish laws (*hō*) and ordinances (*meirei*) had become a subject of academic debate soon after the promulgation of the Constitution. Echoing legal positivism, Ikki had claimed that laws and ordinances are both enacted by the state, but that laws have higher authority because they can be amended or abolished only by other laws.<sup>88</sup>

Although Minobe confirms the superiority of law to ordinance, he dissents from Ikki’s explanation, saying that the Constitution operates in a contrary fashion.<sup>89</sup> The Constitution, he says, is itself an ordinance implemented without sanction of Parliament. He quotes Article 74: “No modification of the Imperial House Law shall be required to be submitted to the deliberation of the Imperial Diet.” Thus ordinances, not laws, are responsible for revising the relevant law. Furthermore the House of Peers is also regulated by ordinances and not by laws, for Article 34 says,

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<sup>86</sup> Quoted by Ienaga, *Minobe Tatsukichi no Shisōshiteki Kenkyū*, p. 14.

<sup>87</sup> *ibid.*, p. 218.

<sup>88</sup> Quoted by Minobe, “Kenpō no Kaishaku ni kansuru Giji Sūsoku [A few questions about the interpretation of the Constitution]”, *Kokkagakkai Zasshi*, vol. 13, no. 143, January 1899, p. 36. Minobe here refers to Ikki’s *Nihon Hōrei Yosan Ron*, published in 1892.

<sup>89</sup> *ibid.*, p. 44.

“The House of Peers shall, in accordance with the Ordinance concerning the House of Peers, be composed of the members of the Imperial Family, of the orders of nobility, and of those persons who have been nominated there by the Emperor.” In Minobe’s view such lingering manifestations of imperial power expose the limitations of both Ikki’s analysis and of present political arrangements.

Characteristically Minobe attempts to ground the difference between laws and ordinances in constitutionalism. In an absolute monarchy, he says, there will be no difference between laws and ordinances, because both are enacted by the sovereign (*kunshu*) or his officers. The law’s superiority on the other hand derives from the introduction of Parliament. “Differences between laws and ordinances become effective only under constitutional government.” This assertion would inevitably lead to the fundamental question of who held ultimate authority, a government which could invoke the emperor’s authority, or Parliament. Although Minobe’s position at this time was by no means fully achieved, this essay is undeniably important. For it acts as a prelude to his later concern for the legitimacy of law, the role of Parliament, and the importance of individual “rights”.

The first expression of Minobe’s Emperor-as-Organ theory occurs in another early article which he published in 1903 after three years of study in Germany.<sup>90</sup> Here for the first time he asserted that sovereignty resided in the state and the monarch was an organ of the state.<sup>91</sup> Yet Minobe’s essay already reveals his constitutional stance. The influence of legal positivism is clear, which he must have assimilated while in Germany, and he comfortably deals with such concepts as the legal person and the rights of the individual, as well as with German metaphysical philosophy. Minobe dissents from Hozumi’s claim that sovereignty resides in the emperor in person, saying that such a claim merely concerns physical reality alone, but legal studies require logical persuasion. He also rejects Hozumi’s particularism, saying that the state as a concept has characteristics applicable to any country,

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<sup>90</sup> Minobe, “Kunshu no Kokuhôjô no Chii”, *Hôgaku Shirin*, vol. 50, November 1903, pp. 1-6. Identifying this article as one of the earliest statements of the theory, Miller says, “he [Minobe] set forth briefly and dogmatically elements of a theory which was to become the crux of a thirty-year academic and political struggle” (Miller, *Minobe Tatsukichi*, p. 27).

<sup>91</sup> The organ theory Minobe adhered to was not new to the Japanese academy, however. In 1889 Ariga Nagao had already claimed that the emperor, as one of the organs of the state, had to comply with the Constitution in exercising his authority. For the Ariga-Hozumi debate in 1889, see Suzuki Yasuzô, “Nihon Kenpôgaku no Seitan to Hatten”, pp. 184-5.



including Japan. And he advocates a flexible interpretation of written laws so that the aim of constitutional studies is always to explain legal principle.

These two early articles anticipate Minobe's life-long concern with the legitimacy of both law and state. Regarding the former he appears to have sought "universal" principles, somewhat close to natural law. With respect to the state he sought a viable mechanism for national unity. Linking the two themes is the ever-present question of the relationship between state and the individual. Minobe's adherence to Parliament is the primary reason for his opposition to absolute power.

In 1904, he published two linked essays intended to criticise Laband's legal positivism. Minobe is much more confident here than in his 1889 article in asserting that the superiority of law derives from the authority of Parliament. Thus the "... Parliamentary sanction of a law has a legal power completely different from that of a decision by a group of scholars. This is because the former, as the organ of legislative power, agrees to give the decision a binding power." Furthermore, "in a constitutional monarchy, state sovereignty (*kokken*) is not exercised by the monarch alone. Organs independent of the monarch take part in the operation of state power. It is mistaken logic to assume that state power is indivisible, and can be exercised by the monarch alone."<sup>92</sup>

Here Minobe departs from the earlier German positivists (such as Laband) and resorts to Jellinek. Minobe had chosen Jellinek from among those of the German school whose ideas were closest to Anglo-American constitutionalism. Yet strong attachment to Parliament as a containing political principle is also deeply personal to him. And the same is true in the cases of the other two subjects of this study, Sakai Toshihiko and Saitô Takao. For when these men grew up, Jiyûminken Undô was still strong, and the opening of Parliament was the ultimate goal for national liberation within the movement. The promulgation of the Constitution and the eventual opening of Parliament were part of their immediate experience. Consciously or unconsciously Minobe was a parliamentarian first before becoming a constitutional expert.<sup>93</sup>

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<sup>92</sup> Minobe, "Hôritsu no Saika ni tsuite [On Legal Sanctions]", *Kenpô oyobi Kenseishi Kenkyû* (Tokyo: Yûhikaku, 1908), reprint 1987, p. 139. The article appeared originally in *Hôgakukyôkai Zasshi*, vol. 22, no. 3, 1904. Minobe published its sequel "Futatabi Hôritsu no Saika ni tsuite" in the same journal later in the year (vol. 22, no. 12), also included in *Kenpô oyobi Kenseishi Kenkyû*.

<sup>93</sup> At least 137 petitions, signed by 320,000 people in total, were submitted to the government between 1874 and 1881, demanding the opening of Parliament, according to Emura Eiichi, "Bakumatsu Meijizenki no Kenpô Kôsô", in Emura (ed.), *Kenpô Kôsô*, p. 455. Emura speculates that about one-



Minobe's attachment to Parliament had made him acutely sensitive to any claim that endorsed the operation of unrestrained power. Yet central to Minobe's constitutional theory is not the state but law. For him law springs from the life of society (*shakai seikatsu*), not the state, which is an artificial organisation. In this sense law precedes the state. Hence "... social life is a prerequisite for the establishment of law. Yet law does not presuppose the establishment of the state, at least theoretically. Law is necessary as long as social life takes place, even without the state. The prerequisite for the existence of law is the life of society, but not the state."<sup>94</sup>

Thus Minobe accepts the premises of natural law to assert that law is paramount. Yet because the state cannot exist without law, he claims that the state's action must be controlled by law.<sup>95</sup> This claim is a direct corollary of the state-self-control theory formulated by Jellinek.<sup>96</sup> Natural law and Jellinek's state-self-control theory together prompt Minobe to claim that one aim of a constitution is to restrict state power (*kokken*). In the process he criticises Bodin, Hobbes, Rousseau, Seydel, and Hozumi for endorsing absolute power: Hobbes for supporting a monarchy's absolute power based on contract theory, Rousseau for his assertion that the general will which underlies legislative power is limitless, and Hozumi for saying that state power transcends a constitution, and cannot be controlled by it.<sup>97</sup>

In more recent years Jellinek's state self-control theory has been criticised by legal experts such as Hans Kelsen (1881–1973) as self-contradictory. How is it possible for the state to impose law and at the same time be controlled by it? Minobe defends the theory, however, saying that "the will to obey self-imposed rules" does exist, for instance, in international law and private contracts, in which there is no

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fourth of the whole population (37 million as of 1881) may have been involved in the nation-wide movement, given the various restrictions in place, such as only heads of households being signatories, the various obstacles on women's political activities, and the poor communications and transport infrastructure.

<sup>94</sup> Minobe, *Nihon Kenpô*, p. 46.

<sup>95</sup> *ibid.*, p. 53.

<sup>96</sup> Minobe cites Jhering as the first person who pointed out that all laws restrict the organs of the state. Yet Jellinek developed the theory further, saying that if its organs are controlled by laws, the state also should be controlled. Minobe quotes Jellinek as saying, "Laws include pledges that the organs of the state make with the people, and that they act according to those laws" (*ibid.*, p.55). Such self restraint is crucial for the organs of the state to ensure the people's trust in them, a prerequisite for the people to predict the consequences of their actions and thus carry out their social life, according to Jellinek.

<sup>97</sup> *ibid.*, pp. 219-20.

supreme law imposer. Yet here Minobe's analogy seems not entirely convincing, because what motivates nations or individuals to obey international law or private contracts is mutual consent between the parties. In the state self-control theory, mutual consent is irrelevant, unless the concept of the people is introduced, because there are no equal parties involved.

At the same time, Minobe holds that the state and the people can be treated as two equal legal persons. The concepts of the legal person, which Minobe learned from legal positivism, and of individual rights, which Minobe absorbed from Jellinek's work, contribute to the claim. However, it was only at the end of his career that Minobe was able to explain definitively why the state, the highest authority, had to obey its own rule.

Minobe answered this question unequivocally in *Nihon Kenpô no Kihonshugi* published in 1934, just six months before the outbreak of the Minobe Affair. Here Minobe advances beyond the metaphysical state as the highest authority, and simply states a key self-regulating principle of constitutionalism, the rule of law: no one is above the law, and those who make it also have to obey it.

As Ienaga has pointed out, Minobe in this regard seems to have reversed his opinions rarely. His basic constitutional points remain more or less the same throughout his works. What shifts exist are more of articulation and emphasis rather than of any fundamental change in thought. Thus in *Nihon Kenpô no Kihonshugi* he asserts that even if it was imposed by the government, the introduction of the Meiji Constitution brought in a legal "revolution". Adhering to the main principle of *Staatslehre*, he reiterates that *pouvoir constituant* (authority to write a constitution) and *pouvoir constitué* (authority created by a constitution) are one and the same. Yet, instead of using this assertion to solidify state power, Minobe anchored that power to law. For once a constitution has been introduced, no state power transcends it. And once the law is interwoven with such essential principles and institutions as inalienable rights and a functioning Parliament, it creates a formidable counterbalance to the state in his theory.

At this point therefore Minobe has clearly moved towards English constitutionalism as articulated by Locke and later by Dicey. For "all state laws can maintain their validity only because those who have enacted the laws recognise that

they too have to comply with them”.<sup>98</sup> His previous adherence to the state is less ardently expressed, but the state remains the highest authority. For Minobe state power (*kokken*) is externally independent and internally supreme. However, it is not absolute, in that it is subject to self-restriction, practical restraints, and international and domestic laws. Thus, in his definition, “supreme” and “absolute” are two different concepts.<sup>99</sup> Yet it is Minobe’s rejection of absolute authority which his opponents saw as a major threat to their vision of national unity.

Thus in its fullest and most timely development Minobe’s constitutional theory celebrated the rule of law at a time of increasing danger from discretionary power. The appeal to law was itself deeply subversive, just as much as the denial of absolute power. For in the context of the 1930s, constitutionalism’s self-regulating mechanism, the rule of law, was increasingly incompatible with the totalitarian system that many began to believe necessary for the survival of the state. Thus Minobe’s theory was criticised at precisely the time of its greatest political relevance: in retrospect his ostracism seems a clear index of achievement. Dissent, thus, had been imposed on him by historical events, but also by the flawed constitutional arrangements he had long scrutinised.

At the same time Minobe’s rejection of absolutism is closely connected to philosophical and practical questions about legal norms. Why and how do people come to obey the law as the embodiment of norms of behaviour? How should such norms be determined? With these and other questions, Minobe probed the self-regulating mechanisms of constitutionalism. Thus, in our next section, we will discuss one aspect of Minobe’s theory conducive to norm creation, common law.

## 2.4. Minobe and the endorsement of common law

Minobe’s adherence to social consciousness (*shakai ishiki*) and his rejection of the absolute state led him to adopt a more flexible interpretation of legal norms than *Rechtsstaat* orthodoxies. In the latter, law is expected to provide “functional”

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<sup>98</sup> Minobe, *Nihon Kenpô no Kihonshugi* (Tokyo: Nihon Hyôronsha, 1934), p. 60.

<sup>99</sup> See Minobe, *Nihon Kenpô*, pp. 146-7.

rationality, regularity, and predictability.<sup>100</sup> Thus administrative law became central to the *Rechtsstaat*, and Japan vigorously followed suit. In this system, legal norms were held to be deductive from prescribed general norms. Minobe by contrast was inclined to seek a more “empirical” rationality, despite being a leading authority on administrative law. This aspect of his theory and its significance can be examined in his endorsement of common law.

As we will see, and despite his alignment with British legal tradition, Minobe’s concept of common or customary law is not entirely equivalent to English common law. Nevertheless it is based on the idea of “equal, private” persons, whose public lives are regulated by law. In Japan such a concept was inimical to the hierarchical view of state power as envisaged in the Constitution and supported by those opposed to parliamentarianism. It was also antagonistic to both reactionary and traditional ideas about social order and obligation. Nevertheless Minobe’s position was regarded as orthodox until the demise of party politics in the 1930s. To contrast Minobe’s views with those of his opponents therefore highlights an underlying conflict which climaxed in the triumph of totalitarianism. This section aims to show the centrality of common law thinking to Minobe’s ostracised views.

In the narrowest sense, common law is a system of court-based principles developed through individual rulings based on the reinterpretation of previous decisions. It is a system of norm creation by induction rather than by deduction from general rules. Aware that Japan does not have the tradition of well-established, common-law courts, Minobe is clearly not referring to the exact system of English common law when he mentions customary law. Rather his usage is a translation from the German *Gewohnheitsrecht*, meaning customary norms of practice and behaviour accepted as rules. Nevertheless, Minobe’s concept of customary law shares some key constitutional principles with common law, notably law as a set of malleable norms responsive to changing realities, and law as a counterbalance to politics. Together they lay down a legal foundation for the public sphere in Habermas’s definition, where political authority is not absolute but examined through the critical debate of well-informed members of society. Minobe’s defence of freedom of speech and his objection to the operations of absolute authority should always be understood in

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<sup>100</sup> See Matsumoto Sannosuke, “Tennôsei Hôshisô” (part II), pp. 47-50.

terms of his view both of the broader, political community and of constitutionalism. Constitutionalism, however, has a different character if we contrast the Anglo-American tradition with that of the European Continent. In the Anglo-American tradition, common law embodies “constitutional” ideas, while on the continent, under the strong influence of Roman law, constitutions tend to defer to traditions of absolute power.

Harvey Wheeler explains the evolution of common law in England with regard to natural law and constitutionalism. Citing anthropological studies, Wheeler claims that “natural law” is common to any primitive society. Communities would evolve shared assumptions and “universal” principles concerning what was just and wrong. In primitive “courts”, these hypotheses about norms of behaviour would be examined in particular cases against evidence. Through the process of collation between principles and evidence, new “prescriptive norms” would emerge, based on which new cases would be examined. For principles are only effective if they are capable of accommodating reality and evidence. Thus common law denies the presence of fixed, absolute norms, and instead insists on a self-regulating mechanism based on interaction between “natural” principles and reality.<sup>101</sup>

This “natural law” principle in common law can also be effective in checking the operations of political power. Despite John Austin’s emphasis on legal sovereignty, the “monolithic” state is a historical rarity, according to Wheeler.<sup>102</sup> Thus in medieval England the dualistic tradition was founded between the king’s absolute authority and the voice of “the people”. “There the popular aspect of monarchy was assimilated into what is sometimes called the folk spirit, but more often the common law; for the common law was thought of as the common possession of the entire people. This dualistic Anglican tradition became institutionalised in a series of conflicts between various English kings and their chief barons.”<sup>103</sup> The Magna Carta of 1215 is the product of such a conflict. “Gradually, over many centuries, this form of baronial civil disobedience became institutionalised in Parliament through impeachment proceedings against errant

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<sup>101</sup> Harvey Wheeler, “Constitutionalism”, in Fred I. Greenstein and Nelson W. Polsby (eds.), *Handbook of Political Science*, Volume 5, *Governmental Institutions and Processes* (Reading, Mass.: Addison-Wesley, 1975), pp. 1-91.

<sup>102</sup> *ibid.*, p. 46.

<sup>103</sup> *ibid.*, pp. 47.



ministers of the crown. This in turn led to the emergence of the working principles of the British constitution: the king acts only on the advice of his ministers; the ministers of the king's cabinet are responsible to Parliament for acts done in the name of the crown; and a cabinet must resign if it loses the confidence of Parliament. In a sense then the British contribution to constitutionalism is the institutionalisation of civil disobedience.”<sup>104</sup> Thus Wheeler asserts that the common law tradition played a key role in the development of British constitutionalism, which he defines as the tacit sponsor of creative dissent.

Such procedures prompt of course fundamental questions about the legitimacy of law, for in what does the final authority of the law consist? In Japan, given the dominant role that *seihô* (administrative law) played in the formation of the centralised government after the Restoration, such questions occurred to Minobe repeatedly. Yet in almost every case his final resort was to invoke the principles and tradition of “common” law.

Thus shortly after his return from study overseas, Minobe wrote in 1904 two important articles about sanctions within the law.<sup>105</sup> And in the following passage he echoes Bluntschli's constitutional view that the people's assent is indispensable for a law to be effective, and boldly challenges administrative law:

Laws are effective only as regulations. I cannot believe, however, that even as regulations laws are effective just because they are written down. The ultimate reason why laws have power rests in the awareness of the people (*kokumin no jikaku*). Laws are effective because they are obeyed. If people do not obey, a law cannot be said to have legal power even if it has been enacted by the state (*kokka*).<sup>106</sup>

Matsuo Takayoshi quotes this passage to assert that by 1905 Minobe had envisaged a British-style constitutional monarchy for Japan and established the framework of his constitutional theory, “a chain of control with the people on top”.

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<sup>104</sup> *ibid.*, pp. 47-8.

<sup>105</sup> Minobe, “Hôritsu no Saika ni tsuite” and “Futatabi Hôritsu no Saika ni tsuite”, *Kenpô oyobi Kenseishi Kenkyû*, pp. 129-71. The phrase “*hôritsu no saika*” appears in Article 6 of the Meiji Constitution as follows: “The Emperor gives sanction to laws, and orders them to be promulgated and executed.” These two articles contain almost all the arguments that Minobe would develop as his Emperor-as-Organ theory.

<sup>106</sup> Minobe, “Futatabi Hôritsu no Saika ni tsuite”, pp. 157-8.

In this chain, the people control Parliament through elections, Parliament controls cabinet ministers through dismissal, and cabinet ministers control the emperor through refusal to authorise “all laws, Imperial Ordinances and Imperial Rescripts of whatever kind, that relate to the affairs of State”. Article 55 of the Meiji Constitution requires a counter-signature by state ministers to authorise those documents. Thus Matsuo concludes that Minobe had come quite early to deny the emperor’s monopoly of sovereign power by endorsing popular sovereignty.<sup>107</sup>

Minobe also moves to endorse interpretative changes in the law. For, “if the people’s awareness changes according to social change, the effectiveness of a law will change even if its articles remain the same”.<sup>108</sup> In this way law may be said to belong to the people, not to the state.

In the above passages Jellinek’s influence on Minobe is very strong. For around this time Minobe was tirelessly translating Jellinek’s works into Japanese, including his *Verfassungsänderung und Verfassungswandlung* [*Constitutional Revision and Change*]. These articles also show the influence of a new branch of legal studies in Germany, *Rechtssoziologie* (the sociology of law), which can be traced back to Savigny and affected the later generations of German legal scholars including Jellinek. Savigny’s interpretation of law as rules inherent in a community can be described as a conservative response to the growing demands of the bourgeoisie for codification of the law in order to protect their interests against the arbitrary rule of government.<sup>109</sup> However, his claim that “law belongs to society” is clearly subversive in the face of the ever increasing use of statutes. Thus when Eugen Ehrlich (1862–1922) later advocated “*lebendes Recht*” (living law), it too was directed against “the compulsive norm of the state”, and was thus strongly anti-statist.<sup>110</sup> Ehrlich’s emphasis on “*lebendes Recht*” again reflects the persistent

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<sup>107</sup> See Matsuo, “Minobe Tatsukichi”, *op. cit.*, pp. 275–8.

<sup>108</sup> Minobe, “Futatabi Hôritsu no Saika ni tsuite”, p. 158.

<sup>109</sup> “With the great codifications of civil law a system of norms was developed securing a private sphere in the strict sense, a sphere in which private people pursued their affairs with one another free from impositions by estate and state, at least in tendency. These codifications guaranteed the institution of private property and, in connection with it, the basic freedoms of contract, of trade, and of inheritance” (Jürgen Habermas, *The Structural Transformation of the Public Sphere*, p. 75).

<sup>110</sup> “The similarity of Ehrlich’s to Savigny’s approach lies in his emphasis on the ‘living law of people,’ based on social behaviour rather than the compulsive norm of the state. Norms observed by the people, whether in matters of religious habits, family life, or commercial relations, are law, even if they are never recognised or formulated by the norm of the state” (Wolfgang Friedmann, *Law in a Changing Society*, second edition, Penguin Books, 1972, p. 20).

resistance to the expanding role of government (the state) in many countries in the late nineteenth century. Thus in a country where “law” was thought essential to create centralised government, Minobe’s attachment to the law of society and the law of the people inevitably led him into confrontation with the law of the state. As with Ehrlich this was especially so with respect to the legitimacy of legal statutes.

Statutes are regulations and rules written by either government or Parliament, although constitutional government requires that any statute needs the sanction of Parliament. Statutes differ from common law, in which various rules grow “organically” through interpretations by judges and lawyers of previous decisions. They are laws intended to deal with the population as a whole, while common law is responsible for cases between two individuals but extended to all applicable cases.

This recognition that there are two types of law, one concerning the relationship between the state and the people and the other between individuals, was keenly felt by legal experts such as Jellinek.<sup>111</sup> In the countries where the tradition of continental law was strong, including France and Germany, the separation between “public” and “private” laws became prominent. This separation, which is traced back to “*ius publicum*” and “*ius privatum*” in Roman law, also passed into the Japanese legal system. So in Japan, “public” laws were intensely exploited as administrative law, because it was felt necessary to insist on the role of government vis-à-vis the people amid government’s expanding role both domestically and internationally. In such a climate, where legal studies begin to assume the character of an achieved political science, the state is an accomplished fact. And any serious inquiry into the legitimacy of statutes tends to be ignored. Typically then the Meiji Constitution was promulgated arbitrarily, by the emperor, “in virtue of the supreme power” that he inherited from his ancestors.

Temperamentally and professionally Minobe revolted against this trend, although he was already a prominent member of the legal establishment. Thus in 1908, he argued that laws stipulated by the state may not be so authoritative as we assume. And as an alternative to statutes, he proposed the claims of customary law.

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<sup>111</sup> However, in England, with its powerful tradition of common law, Bentham and John Austin tried to explain the legitimacy of statutes through utilitarian thinking, or legal positivism. Although their intention was to protect the autonomy of the legal profession, they defined law as a command of supreme authority. Therefore, the people have to obey it whatever the reason. See Roger Cotterrell, *The Sociology of Law* (London: Butterworths, 1992), p. 26.



Thus “... the conventional opinion is that customary law is less effective than statutes, customary law cannot alter statutes, and statutes cannot be altered unless by another statute”. Yet Minobe has long doubted such a view, for “laws introduced by the state do not have such power. Statutes have legal authority not simply because they are the expression of the will of the state but also because they have various forces behind them that give them legal authority”.<sup>112</sup>

As examples of such forces, Minobe cites the common law as practised in England, and natural law based on rationalism and a sense of justice. In English common law history, the interpretation of the law has often been changed: some laws have ceased to be effective because changed social conditions rendered interpretative change necessary or the existing laws no longer valid. Hence, for Minobe, it is “superficial” to say that the law is “almighty”.<sup>113</sup>

Again in an article he wrote in 1909, Minobe cited customary law and the law of reason (*rihō*) as “non-statute” law. Customary law had two sources, social customs and case law. English legal history once more provides highly convincing evidence that case law can indeed become general law: the state, says Minobe, must always be willing to admit into its rulings the accumulated wisdom of its own institutions.<sup>114</sup>

Minobe would later incorporate his adherence to customary law and his suspicion of statutes into his major claim that there is no such thing as absolute power. Thus in *Nihon Kenpō no Kihonshugi* of 1934, he articulates more clearly than ever before the “natural” forces that restrict the exercise of state power. These are the customary law that develops naturally in society, and the law of justice, international forms of these, and the restrictions that the state imposes on itself.<sup>115</sup> Thus Minobe’s

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<sup>112</sup> Minobe, “Kenpō no Kaisei to Kenpō no Hensen”, in *Ierinekkū Jinken Sengenron hoka Sanpen* (Tokyo: Nihon Hyōronsha, 1946), pp. 188-9. First published, by the same publisher, in 1929, the article is a transcript of a public lecture Minobe gave in March 1908 based on Jellinek’s *Verfassungsänderung und Verfassungswandlung*.

<sup>113</sup> *ibid.*, p. 191.

<sup>114</sup> Minobe, “Hiseiteihō Shōron”, *Hōgakukyōkai Zasshi*, vol. 27, no. 2, February 1909, p. 184. Minobe’s familiarity with English law derives not only from the influence of Jellinek, whose idea of law was closest to the Anglo-American tradition among his German contemporaries, but also from his initial interest in comparative law. See Ukai Nobushige, “Minobe-sensei no Hikaku-hō-teki Kenkyū”, *Kokkagakkai Zasshi*, vol. 62, no. 7, 1948, pp. 354-69.

<sup>115</sup> Minobe, *Nihon Kenpō no Kihonshugi*, p. 31.

assertion that state power must be legally controlled is reinforced by his insistence on the autonomy of law in society.

Minobe's attempts to retain concepts of "society" at the centre of his legal theory are also reflected in his criticism of legal positivism and in his call for flexible legal interpretation. In a paper of 1930 he criticises Kelsen for treating law as a science of pure logic and for eliminating psychological, social and political factors from jurisprudence.<sup>116</sup> Kelsen had assumed that laws are imposed rules. He proposed to deal with laws as a system of norms against which "reality may be measured". For him, national unity is possible only through a concrete mechanism such as law. Therefore law must be interpreted as logically as possible, and for this reason Kelsen opposed an interpretative approach towards law.<sup>117</sup>

Minobe's objection to Kelsen's legal positivism is based on two of his main concerns. One is the superiority of law to the state. The other is the legitimisation of law, which Minobe thought Kelsen's theory unable to provide. For Minobe (as for Kelsen), law consists of two parts, "is" (*sein*), its essence, and "ought" (*sollen*), specific rules. The former refers to law's universal and eternal character applicable to any society and any time. The latter changes according to time and society. Minobe criticises Kelsen for ignoring "is", since "ought" alone cannot explain why people have to obey. For Minobe, society is capable of sustaining "is" in law. In this way Minobe was advocating flexible norm creation, which he assumed achievable in common or social law.

Minobe claims that the so-called "is" elements of law derive from social consciousness (*shakai ishiki*) or social psychology (*shakai shinri*), which are capable of changing "ought". For him social consciousness consists of three elements: the people's willingness to obey, custom, and a socially derived sense of justice. And social consciousness changes as society changes. Thus to explain social consciousness, Minobe resorts to English common law, asserting that "human rationality and sense of justice are forces that change and modify customary law and statutes. If customary law contradicts a sense of justice, a small group of people may

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<sup>116</sup> Minobe, "Keruzen Kyôju no Kokuhô oyobi Kokusaihô Riron no Hihyô" (1), (2), and (3), *Kokkagakkai Zasshi*, vol. 44, no. 8, 1930, pp. 1177-212, no. 9, pp. 1375-406, and no. 10, pp. 1532-50.

<sup>117</sup> See Ukai Nobushige, "Uingakuka [Vienna School of Constitutional Theory]", *KNKH*, vol. 7, 1959, pp. 130-40.



begin to complain about the contradiction, their claim will be accepted as a court ruling, government begin to treat it as a norm, and this new norm be gradually accepted in society. This may lead to revision of existing laws or their change because of a court's ruling or in actual administrative treatment."<sup>118</sup>

Social consciousness is therefore the embodied concept of Minobe's constitutionalism, his recognition that values, if they are to be shared by the people, must result from the interaction of fact and idea. Hence the norms that bind the people spring from social reality, not from legal reality as Kelsen proposes.

Social consciousness (*shakai ishiki*) also underlies Minobe's assertion that the people are the final arbiters of legal authority. Thus, in this same essay, Minobe attempts to justify a contract theory by invoking social consciousness. In his definition, such a contract is not based on agreement between the state and the people, but nevertheless a contractual pledge is recognised by social consciousness. Thus "if 'natural law' is understood properly, it [social consciousness] can be called a kind of natural law, which restricts the state directly regardless of the will of the state".<sup>119</sup> Here Minobe departs from Jellinek's state self-control theory, saying that constraints on the state come not only from the rules that it imposes on itself in the form of statutes and international law but also from customary and "natural law".<sup>120</sup>

Thus the mitigating power of social forces becomes central to Minobe's constitutional thinking, reflecting not only the influence of Jellinek<sup>121</sup> but also his

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<sup>118</sup> Minobe, "Keruzen Kyôju no Kokuhô oyobi Kokusaihô Riron no Hihyô" (1), p. 1206.

<sup>119</sup> Minobe, "Keruzen Kyôju no Kokuhô oyobi Kokusaihô Riron no Hihyô" (3), pp. 1547-8.

<sup>120</sup> Minobe says; "It is regrettable that Jellinek emphasises state power over much, and fails to recognise fully that the law of reason (*rihō*) also restricts the state" (*ibid.*, pp. 1542-3). However, this "natural law" aspect of Minobe's constitutional theory has caused problems for students of his work, because of his equally enthusiastic endorsement of a gradualist view of history as social progress. Ienaga attributes Minobe's empirical and "scientific" approach to his historical consciousness, and sees Minobe's distinctively liberal thinking in his predilections both for natural law and for historical consciousness. However, Ienaga finds it difficult to combine natural law and historical consciousness into a coherent perspective. Ienaga concludes, reluctantly, that Minobe departs from his empirical approach when he discusses values he attributes to natural law. See Ienaga, *op. cit.*, p.156. More recently, Nagao Ryûichi ascribes the combination of empiricism and idealism in Minobe's work to "the myth that values can exist in empirical reality" (Nagao, "Minobe Tatsukichi no Hôtetsugaku", in *Nihon Kenpô Shisôshi*, Tokyo: Kôdansha, 1996, p. 173).

<sup>121</sup> Minobe learned from Jellinek to separate the state as "a social phenomenon" and from its "juristic aspect". Yet this methodology has been criticised as of "merely conceptual importance" for both Jellinek and Minobe. Thus, Frank Miller: "The distinction between the sociological and juristic views of the state is valid, as Minobe said, only as discrimination in method of conceptualization. It does not mean that the state has a dual existence; it is merely a matter of distinguishing between a total observation of the state and one of several particular observations—political, economic, anthropological, or geographic, as well as juristic. For both, methodological discrimination was

own inclination towards natural and common law. At the same time, Minobe's insistence on social factors exposed deep ideological divisions over the role of law in a society which many Japanese had begun to regard as highly defective. For Minobe's insistence on common and natural law was unpalatable not only to those who favoured bureaucratic control, but also to those who identified with a Marxist view of class struggle.

Central here is the role of law in a highly unequal society. And Minobe himself recognised the economic, social and political defects of the country in another key essay of 1930. "Unfortunately", he says, "nobody can deny that the entire domestic situation is far from sound. Economically, the distribution of wealth is extremely uneven, and the plight of the farming communities and the misery of unskilled workers appear endless. The domination of venality is also prominent. If you have money, no matter how inadequate your talent, you can have high social status, obtain a peerage or orders of decoration, and become a member of the House of Peers. What is worse, party politics has begun to reveal flaws no less than those of the *hanbatsu* plutocracy, and for the moment the former appears to have replaced the latter. Scandals involving government officials, members of Parliament, and leaders of the political parties have begun to spring up, and people have the strong suspicion that further excesses have now been swept under the carpet".<sup>122</sup>

Such perceptions inevitably raise questions about the role of law in society. Should law play a more positive role to "rectify" society's flaws? Thus Ukai Nobushige points out that Kelsen's "pure theory of law" had really aimed at protecting a minority from the encroachment of authority. Kelsen had dismissed the idea of social consent, asking whether such a notion could be effective, or even created in a society where its members were subject to coercion. He had shown how the concept of justice differs so often from the concept of law. For "law is said to represent justice conceptually. But close examination reveals that law merely represents a concept of justice held by the ruling group, and differs from other

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necessary as a means of defending positive juristic science against the corrupting influences of conceptual patterns which might be valid for sociological, political, or philosophical thinking, but which conducted irresolvable contradictions and erratic departures in juristic thinking" (Miller, *op. cit.*, p. 46).

<sup>122</sup> Minobe, "Kyôsan-tô Jiken ni tsuite no Kansô", *Gendai Kensei Hyôron* (Tokyo: Iwanami Shoten, 1930), p. 422-3. Even in an essay in which he condemns communist movements assisted by "foreign" forces, Minobe has to recognise the growing inequality of Japanese society.

concepts of justice held by other groups".<sup>123</sup> In the face of such pressures, Minobe's social consciousness appears ineffectual for directing society towards "better" and "fairer" arrangements.

Thus Kuroda Ryôichi criticises the school of liberal interpretation, with which Minobe is closely associated, for compromising on capitalist representative government. For him, "...the school insists on 'living law' or 'norms based on social consciousness', which are in fact not consciousness of the whole population, but consciousness of the ruling class..."<sup>124</sup> Echoing such views, Miller also asserts that Minobe's grasp of society is incomplete. "His [Minobe's] ideas of law and state, here and elsewhere, are tenuously anchored to 'reality' in the form of 'society.' But this society comprised a shadowy substance imperfectly displayed in his recognition of the existence of society apart from the state, in his reliance on social psychology in the definition of law, and in his inclusion of the 'rational conscience of society' among the sources of law."<sup>125</sup> However, Minobe's excessive reliance on social consciousness is partly to be explained by his understanding of the judicial system. For Minobe did not recognise judicial review. Thus he had to rely on social consciousness excessively in order to ensure the autonomy of law.

Thus "Marxist" or "positivist" criticism of Minobe as a bourgeois apologist cannot fully invalidate his inquiry into the legitimacy of the law. For it is still possible to defend Minobe's position as a strategy for envisaging a civil society where autonomous people can conduct the common life. This is because of the "civil disobedience" aspect of common law, to which Minobe subscribes. Thus when the totalitarian system with the emperor as nominal head began to prevail (when state power began to dominate social life), Minobe's claim that the law of justice may have more authority than statutes and imperial ordinances became truly subversive. This of course earned him the opprobrium of the nationalists, and they attacked Minobe's claim that the judicial power was independent of the executive power and was not subject to the authority of imperial ordinances.

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<sup>123</sup> Ukai, "Uingakuka [Vienna School of Constitutional Theory]", p. 138.

<sup>124</sup> Kuroda Ryôichi, "Kenpô Kaishaku no Ichikôsetsu", in Suzuki Yasuzô *et al* (eds.), *Kenpôgaku no Kadai* (Tokyo: Keisô Shobô, 1954), p. 77.

<sup>125</sup> Miller, *op. cit.*, pp. 46-7.

Yet despite his challenging of a pernicious consequence Minobe's view of judicial power expressed in *Chikujō Kenpō Seigi* is not entirely coherent. For his strong opposition to any judicial review of statutes tends to undermine his defence of judicial power against the encroachments of executive power.<sup>126</sup> Nevertheless, in his defence of the independence of the judicial power, we can recognise his characteristic adherence to the self-regulating mechanisms of the law.

This stance is clearly discernible in his defence of the jury system that Japan introduced in 1923.<sup>127</sup> The Japanese jury system was much less comprehensive than similar systems in Britain and the United States. It was exercised only in local courts with regard to criminal cases. The defendant could choose between a jury trial and a trial by judges. When a presiding judge thought that a verdict by a jury was unsatisfactory, he could call for another jury. Minobe himself expressed the concern that non-professionals might not be able to grasp complicated legal matters. Nevertheless, he supported the system, saying that it provided ordinary people with a chance to take part in the exercise of judicial power, as well as helping to reduce the excesses caused by one-sided judgements (by *kanken* bureaucrats and police), and that it also helped to mitigate public discontent.

Minobe also defended the jury system against the prevailing criticism that it was unconstitutional because jurors were not agents of the emperor as Article 57 indicated.<sup>128</sup> Minobe saw jurors, who were ordinary people, as tacit "law-makers". Thus he asserted that the Constitution should not be applied pedantically, and that its essential aim should be respected. More importantly, he defined judicial power much more broadly than was conventional, saying that jurors formed part of that power. Thus "... not only are jurors involved in the trial but also prosecutors and lawyers, who try to affect rulings using their own oratory. It is clear that if the latter do not violate the independence of the courts, then by the same token jurors' decisions do not violate that independence even if they can affect court rulings."<sup>129</sup>

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<sup>126</sup> For his opposition to judicial review of statutes, see Minobe, *Chikujō Kenpō Seigi* (Tokyo: Yūhikaku, 1927), reprint 1932, p. 591.

<sup>127</sup> The law intended to introduce a jury system was enacted in 1923, and enforced in 1924.

<sup>128</sup> Article 57: "The Judicature shall be exercised by the Courts of Law according to law, in the name of the Emperor. The organisation of the Courts of Law shall be determined by law."

<sup>129</sup> Minobe, *Chikujō Kenpō Seigi*, p. 587.



Minobe's adherence to the ideals of common law justice is also supported by his clear awareness about what constitutes legitimate political power. He repeatedly asserts that the legitimacy of statutes derives from the people's recognition that they are made by members of Parliament who are legitimately recognised as "law-makers".<sup>130</sup> Thus Minobe's support of Parliament is deeply rooted in his definition of legitimate political power. His views, constituting a strong defence of the legal state, are therefore subversive of "*taiken*" ambitions, where power is based on expediency and repudiates appropriate form.

Nevertheless historians are divided over Minobe's adherence to parliamentarianism after the May 15<sup>th</sup> Incident in 1932, when Prime Minister Inukai and other government leaders were assassinated by young officers who criticised them for ignoring the plight of ordinary people. At that time Minobe reluctantly welcomed the formation of a national unity Cabinet led by Admiral Saitô Makoto. From then on, for some historians, his support for party politics waned.

For Ienaga, "it is undeniable that Minobe became pessimistic about the future of parliamentary politics after the Manchurian Incident in 1931".<sup>131</sup> Banno Junji also thinks that after the formation of the Saito cabinet, Minobe became close to "Tôsei-ha" military officers and bureaucrats calling for reform, joining the study groups established by them. Minobe then began to call for the establishment of a national council to debate national policies, thereby undermining parliamentary politics. Banno adds: "Minobe did not support party government consistently. He was conservative and had a tendency to support rightwing thought. He openly opposed the attempt by Seiyûkai to form a Cabinet because in his view the party was more concerned with private interests than politics."<sup>132</sup> Thus Banno asserts that Minobe is one of the intellectuals who supported the further weakening of constitutional government, providing theoretical assurance for the shift from the national unity Cabinet to a government of "constitutional autocracy".<sup>133</sup>

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<sup>130</sup> In this argument, Minobe is concerned not only with the essence of statutory laws but also with correct procedure. Principle is not enough to ensure legitimacy. Appropriate form, which he believes is provided by Parliament, is just as important. Here the assent of the people is again central to his understanding of legitimacy.

<sup>131</sup> Ienaga, *op. cit.*, p. 240.

<sup>132</sup> Banno, "Seitôseiji no Hôkai", in Banno and Miyachi Masato (eds.), *Nihon Kindaishi ni okeru Tenkanki no Kenkyû* (Tokyo: Yamakawa Shuppan, 1985), p. 395.

<sup>133</sup> See Masuda Tomoko, *Tennôsei to Kokka*, p. 244.



The charge deserves careful scrutiny, for it proposes a kind of apostasy. Yet as Ienaga points out, Minobe's views of national unity were markedly different from those who called for national unity under the emperor's leadership.<sup>134</sup> And such contrasts are essential if we are to distinguish Minobe's vision of a civil society from the forces that supported totalitarianism.

Hence one month before his ostracism, in an act of deliberate defiance, Minobe returned to his old theme of the limitations of statism. Now he warned against xenophobic nationalism and the militarism that would damage society and endanger the country's survival. For Minobe excessive identification with the state was anathema, for one is a member of society and of a family, and also an individual with one's own personality, before one is a member of the state. Excessive nationalism simply divides the public mind (*minshin*). "Excessive nationalist sentiments would create a minority who blindly follow their emotions or pretend to be following them, and these tend to label people who oppose their beliefs as criminal and unpatriotic and silence them even by resorting to violence. I assume that this is one reason why we have heard common criticism over the past few years about the frequent suppression of freedoms of speech."<sup>135</sup>

In this important passage, Minobe criticises not only those extreme nationalists who proclaim the absolute importance of national policy even at the expense of society and of individual lives, but also the government that has tried to silence dissent. Here Minobe's strong opposition to state power is backed by an unequivocal adherence to free speech. Clearly, for him, national unity entails a society where individuals can maintain their freedoms and personal autonomy. Thus even if Minobe's call for a national unity government can be judged a grave mistake in terms of the protection of parliamentarianism and party politics, nevertheless such a claim does not contradict his adherence to free government. Here, even within his political miscalculation, his commitment to principle remains clear. Minobe did not capitulate but continued in the spirit of his own enquiry.

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<sup>134</sup> Ienaga indicates three distinctive differences between Minobe and the mainstream when both called for stronger state control: Minobe's sympathy towards socialism, although he never fully accepted socialism or communism, his criticism of fascism, and his critiques of militarism. See Ienaga, *op. cit.*, p. 242.

<sup>135</sup> Minobe, "Kokkashugi no Shisô to sono Genkai", *Kaizô*, December 1934, p. 10.

Common law thinking is therefore central to Minobe's vision of free government, and sharply contrasts with the "positive" law advocated by his opponents. What links the emperor-centred nationalism of Uesugi and the Japanese Marxist view of an ideal society is their common insistence on fixed norms, and that society should strive to achieve them. Minobe's view, entailing the denial of fixed norms and calling for a mechanism for norm creation, is unacceptable to both. For the nationalists, it is too flexible, allowing for continuous and disruptive change. For the "Marxists", Minobe's theory is a compromise, failing to assert the creation of new norms by the working class. However, for Minobe, their joint insistence on fixed norms hinders the growth of a civil society precisely because they see norms as prescriptive. Such solutions do not allow for the development of a self-regulating mechanism of society, in which freedom of speech is a crucial component: for Minobe the potential emergence of new norms, unimpeded by state or party, remains paramount.

It now remains to discuss Minobe's views of political rights and representation, two key components of civil liberties, where his inclination to support customary law and an autonomous mechanism of society clashes with his equally strong views on the proper role of statutes. Yet in these areas also Minobe's heterodox liberalism once again informs an examined critique of Japanese politics and society.

## **2.5. Minobe's concepts of rights and the public sphere: definition and resistance**

In a pamphlet he wrote in English in 1872 aimed at explaining religious freedom in Japan, Mori Arinori, a key reformer and future education minister, affirmed that the Japanese had enjoyed no real concept of freedom of conscience.<sup>136</sup> This

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<sup>136</sup> Mori Arinori, "Religious Freedom in Japan", privately printed, included in Meiji Bunka Kenkyūkai (ed.), *Meiji Bunka Zenshū*, vol. 12, Shūkyōhen (Tokyo: Nihon Hyōronsha, 1992). Quoted by Maruyama Masao (Maruyama, *Bunmeiron no Gairyaku o yomu*, vol. 3, Iwanami Shinsho, 1986, p. 125). But Maruyama also says that Mori asserted that no political power could intervene in man's inner freedom (Maruyama, *Nihon no Shisō*, Iwanami Shinsho, 1961, p. 41).

interpretation of the Japanese understanding of freedom of thought has been more or less accepted by subsequent scholarship.<sup>137</sup> Thus the failure of the Japanese to create a civil society is often attributed to their weak sense of autonomy, of individuality, and of personal rights. This section will deal only indirectly with the question of whether or not this claim is justifiable. But through examining Minobe's inquiry into public and private rights, I hope to present an alternative view that freedoms or rights are not directly attributable to a people, but are rather implicit in a consciously deployed language of assertion and resistance in a dynamic process of social definition.

In post-Restoration Japan, there is no better word than "*kô*" (meaning the public, or the population as a whole) to record this process. At this time the word appears often in new combined forms such as "*kôron*" (public opinion), "*kôhō*" (public law), and "*kôeki*" (public interest). The two contrasting nuances of the word, implying what is common and shared on the one hand, and self-less and self-abnegating on the other, coexisted during the period.

Thus "*kôron*" appears in the Charter Oath of 1868, representing the key principle of the Restoration, public debate. "*Kôron*" was used widely by later generations seeking wider public participation in the political decision-making process. At the same time, for Shintoists, who became administrators of the new government, "*kô*" meant absolute authority, which was just, transcendent, and embodied in the person of the emperor. As Japan became an imperial power and political leaders began to feel the strains of a pluralistic society, "*kô*" increasingly came to mean the surrender of one's private life for the sake of the nation.

The linguistic malleability of "*kô*" and its strategic usage are clearly related to the metamorphosis of the Meiji state. Relevantly, Ishida Takeshi points out the eventual interchangeability of the concepts of state and of people. In his view the two concepts were clearly distinguished in the first half of the Meiji period. Yet the distinction began to blur in the late Meiji period with active promotion of the idea of the state as a metaphorical family. During the Taishō period, the concepts separated again, only to fuse once more in the 1930s. Ishida indicates that the notion of a public based on the amalgamation of people and state tends to encroach on people's

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<sup>137</sup> See, for instance, Matsumoto Sannosuke, "Tennōsei Hōshisō" (part II), pp. 14-15.

private lives, and he provides a Foucauldian analysis: "... If the state and the people are understood as interchangeable, the state will be perceived not as an artificially created structure but as 'naturally given'. [In this definition] the state leaves no room for choice or change. Also it defies any limit on its definition and functions, and creates the tendency for state power to intervene in private lives."<sup>138</sup> With increasing bureaucratic control and people's identification with the state, ideas of the *public* tended to be identified with the state itself. In such a "public" sphere, the private inhabits a compromised realm of highly vulnerable personal freedom. Thus the state's encroachment on the public domain may be said to align itself with the foundations of Japanese fascism in the 1930s.

Nevertheless, the concept of individual "rights" is also central to Japanese political thought, and was enthusiastically promoted by the early Meiji reformers and then by *jiyûminken* (freedom and people's rights) activists seeking the establishment of Parliament.<sup>139</sup> In fact, the introduction of such concepts of private law as rights, contract, and the legal person drastically transformed the economic and social arrangements of the country. Such incorporation was initially pragmatic, as the Meiji leaders recognised that to introduce Western law was central to the country's modernisation: amongst other things it was a political necessity in order to terminate the "unequal" treaties that Japan had signed with the Western powers before the Restoration. The implantation was problematic, however, as a draft civil code based

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<sup>138</sup> Ishida Takeshi, "Kuni towa nani ka", *Nihon no Seiji to Kotoba*, vol. 1 (Tokyo: Tokyo Daigaku Shuppankai, 1989), p. 158. Andrew Barshay also defines the "public" sphere in pre-war Japan as "a vast area of social thought and practice concerned with the national life, one that fed and transcended official and purely private life" (Andrew Barshay, *State and Intellectual in Imperial Japan: The Public Man in Crisis*, Berkeley: University of California Press, 1988, p. xiii).

<sup>139</sup> Mitsukuri Rinshô (1846–97), who was ordered by the Meiji government to translate the French criminal code in 1869, claims that he took the words "*kenri*" for rights and "*gimu*" for obligations from the Chinese translations of the two English words in Henry Wheaton's *Elements of International Law*. In 1870, he and his group led by Etô Shinpei at the Seidokyoku of the Dajôkan started to draft a civil code based on the French Code Civil. Mitsukuri invented *minken* for *droit civil*. "When I used *minken* for *droit civil*, some members of the staff complained that it was unacceptable to assume that the people (*min*) have rights. I tried to defend my stance, but the debate was fierce. Luckily Etô intervened and settled the matter." See Ôtsuki Fumihiko (ed.), "Mitsukuri Rinshô-kun Den", in Kato Shûichi and Maruyama Masao (eds.), *Honyaku no Shisô*, pp. 303–12. On the other hand Boissonade, explaining human rights to Japanese students, says that the French constitution includes provisions about human rights. They have not yet been written down in Japan, although such rights have been recognised there. Human rights mean no discrimination between master and slave. Roman law includes slaves as tradable objects. But "I was told that there is no tradition of slave trading in Japan". See Boissonade, "Hôritsutaï Kôgai", in Matsumoto Sannosuke and Yamamuro Shinichi (eds.), *Gakumon to Chishikijin*, p. 328. Both "*kenri*" and "*gimu*" had become part of Japanese vocabulary well before 1890, according to Katô, "Meijishoki no Hon'yaku", *Honyaku no Shisô*, p. 363.



on the French Code was abandoned in 1892 after “traditionalists” opposed its provisions dealing with the family as too libertarian and detrimental to “indigenous” social values. So, in 1896, provisions dealing with material assets survived relatively unscathed, but in 1898 provisions regarding the family were drastically rewritten so as to grant overwhelming power to the head of a household. Yet concepts of individual rights and of the legal person who assumes both rights and obligations, and of contract between two legal persons, nevertheless took deep root in Japan. Minobe’s thought in this area exists at the conjunction of increasingly intrusive notions of the public sphere with resilient and resistant notions of individual rights and the legal person.<sup>140</sup>

In this way “public” law became central to Minobe’s thought as part of his exploration of the role of the state and its relationship with private liberties. This section will therefore deal with two aspects of public law relevant to Minobe’s thought: his concept of individual rights and his characteristic engagement with discretionary power.

The pre-war Japanese civil code, in which rights are dealt with, bears the distinctive influence of the French and German codes, and thus of the Roman law tradition. Roman law distinguished between laws applicable to the citizens of Rome, *jus civile*, and law applicable to the rest, *jus gentium*. Under this distinction, rights and a capacity for rights were also distinguished. Everyone might have a capacity for rights, but in order to exercise them one had to be a Roman citizen.<sup>141</sup>

This distinction between rights and a capacity for rights also entered into the Japanese civil code. For instance, minors, wives and mentally disabled people are

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<sup>140</sup> Habermas argues that such private law concepts as contract and the legal person provided a central model for contractual relationships in a market economy characterised by free commodity exchange and social labour. These private law principles also prompted various legal changes in Europe, including the formulation of civil codes on the continent in the late eighteenth and early nineteenth century. These were intended to ensure private rights, particularly “free power of control over property”, and also constitutions. “The *status libertatis*, the *status civitatis*, and the *status familiae* gave way to the one *status naturalis*, now ascribed generally to all legal subjects—thus corresponding to the fundamental parity among owners of commodities in the market and among educated individuals in the public sphere” (Habermas, *The Structural Transformation of the Public Sphere*, p. 75).

<sup>141</sup> “Thus the Roman law while recognising a slave as a natural being, and therefore one who had to be considered in a general classification of persons, regarded him nevertheless as utterly devoid of legal existence. He had no ‘*caput*’ and as Modestinus observes, he only acquired a civil status on the day of his manumission” (W. H. Rattigan, *Roman Law of Persons*, London: Wildy & Sons, 1873, reprinted by Wm. W. Gaunt & Sons, 1994, p. 3)



deemed legally incapable of exercising their rights under the code. Minobe follows this tradition, when he says that the principle of legal equality introduced after the Meiji Restoration is equality of capacity, not bona fide equal rights.<sup>142</sup> Thus everyone can assume a public post as a citizen of the state (*Staatsbürger*), but only if one has obtained appropriate qualifications. Yet this in turn is a significant departure from the samurai era when social status was hereditary, and access to the avenues of state and *han* authority exclusive.

At the same time Minobe recognises natural rights, such as property rights, that even the Constitution cannot restrict, and asserts that in any conflict between individual rights and the common good a compromise must be found between them. Hence “the most important ethical requirement of constitutional politics is to respect the people as individuals and to liberate them from enslavement. To achieve this goal, present-day state law guarantees individual freedom and security of property. Individuals possess rights so that freedom and property cannot be taken away as long as such individual rights do not damage the safety of society and other people’s benefits.”<sup>143</sup>

Thus Minobe uses the word for rights (*kenri*) in two ways, one based on the Roman law tradition, rights deriving from membership, and the other, “inalienable” rights to be defended from interference. The first usage is more prominent in his major works on the interpretation of the Meiji Constitution. However, it is the second usage that sustained his inquiry into the legitimacy of power.

Minobe owes to Jellinek his conceptualisation of rights. He is attracted to the German scholar’s thought precisely because the latter explains rights as a claim on one’s freedom, a concept conceived in opposition to the incursions of state power. Shortly after he returned from Germany in 1901, Minobe translated and published all of Jellinek’s works related to the concepts of rights and the public sphere: an outline of *System der subjektiven öffentlichen Rechte* [*The System of Public Rights*] in 1903, *Das Recht der Minoritäten* [*The Rights of Minorities*] in 1904, a chapter of his *Allgemeine Staatslehre* entitled “Die geschichtlichen Haupttypen des Staates [Major

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<sup>142</sup> Minobe, *Nihon Gyôseihô*, vol. 1 (Tokyo: Yûhikaku, 1936), third edition 1941, p. 76.

<sup>143</sup> Minobe, *Kenpô Satsuyô*, p. 152.

Historical Types of the State]” in 1904, and *Die Erklärung der Menschen- und Bürgerrechte* [*The Analysis of Bills of Rights*] in 1906.<sup>144</sup>

Jellinek’s emphasis on rights reflects his concern for the protection of private lives in a highly centralised political structure, and also his awareness of the emergence of the “masses.” He assumes that the individual, and thus his freedom, preceded the creation of state power. In fact, he says, integrated state power is a relatively modern phenomenon, in contrast to the less impeded play of interests of previous centuries. Hence the idea of rights emerges in response to the growth of a centralised state and the pressures of mass society.<sup>145</sup>

In this way concepts of individual and social rights, and also written constitutions, are alike legacies of the multipolarity of power and the recognition that, in some areas, individuals should be deferred to even by state power. The state empowers itself with at least the nominal aim of the protection of individual freedom.

For Jellinek individual freedom is the necessary ground of civil society. Thus in *The Rights of Minorities*, he criticises the “tyranny” of majority opinion created by Parliament or expressed through public opinion. His pamphlet was written against the background of what he calls the “ever widening process of democratisation” and the “collectivistic tendency in the framing of human society” in the late nineteenth century. Hence, as with de Tocqueville, he highlights the dangers of “a democratic Majority” in order to proclaim the importance of protecting minority opinion. For Jellinek, social freedom must be protected from absolute power, whatever form it may take.<sup>146</sup>

At the same time, for him, the state is a metaphysical community, and yet a concrete reality of life within which people have to learn how to live. He too assumes the state’s essential force. Membership of society comes with obligations, and conflicts between those obligations and one’s private life are inevitable. Thus

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<sup>144</sup> Jellinek published the *System der subjektiven öffentlichen Rechte* in 1892, the *Das Recht der Minoritäten* in 1891, the *Die Erklärung der Menschen- und Bürgerrechte* in 1895, and the *Allgemeine Staatslehre* in 1900.

<sup>145</sup> In the *Analysis of Bills of Rights*, Jellinek asserts that the idea that individuals were superior to the state was established in England by the seventeenth century, deriving from the old Germanic idea that state activities be limited.

<sup>146</sup> See Georg Jellinek, *The Rights of Minorities*, translated from the German by A. M. Baty and T. Baty (London: P.S. King & Son, 1912), pp. 32-4.

Jellinek divides rights into two types, public and private. Public rights, *öffentliche Rechte*, are rights that individuals possess as a member of the state, and which they can invoke in their dealings with the state. Private rights are inherent in every person and operate on two parties equally. Yet as Jellinek himself acknowledges, public and private rights trespass on each other because sometimes the state acts as the ruler and sometimes as a private person. Nevertheless Jellinek's assertion of public and private rights is his recognition that one's private life must be protected from the "rights" of the common community through negotiation.

From Jellinek and his intellectual forebears Minobe inherited this tension between collective well-being and the rights of the individual. For him rights proclaim the assertion of the will for the sake of one's benefits. Obligations are restraints on one's will for the sake of others' benefits.<sup>147</sup> In this formulation, rights and obligations can be mutually compatible, since the benefits of individuals and of the state are to some extent reciprocal. Thus one's public rights can contain an element of obligation, according to Minobe. At the same time, he is inclined to assert the inalienable in "public" rights, and criticises the automatic separation between private and public. "Strictly speaking, every right should not be violated in an unlawful way... Every private right has elements of public right. That is to say, individuals have the right to demand that the state not interfere in the exercise of their private rights."<sup>148</sup> This led Minobe to the problem of how to assert inalienable rights in the absence of constitutional guarantees.

Highly relevant here is that the Constitution does indeed include both a bill of rights, Chapter 2, and the independent police ordinance power of government, Article 9. Yet the article grants the emperor the power to issue ordinances necessary "for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects", as well as for implementation of laws, independently of Parliament. And although the article stipulates that no ordinance can alter the

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<sup>147</sup> Minobe's definition here is based on that of Jellinek. Combining definitions of rights by Hegel (one's will) and Rudolf von Jhering (one's benefits), Jellinek says that rights are one's profits that are legally protected because law recognises one's will. See Minobe's translation of Jellinek's *System der subjektiven öffentlichen Rechte*, "Jellinekku-shi Kôkenron no Gaiyô", *Kenpô oyobi Kenpôshi Kenkyû*, p. 643. The translation originally appeared in *Hôgaku Shinpô*, vol. 13, 1903.

<sup>148</sup> Minobe, *Nihon Gyôseihô*, vol. 1, p. 131.

existing laws, the embryonic stage of statutory law makes the relationship between laws and ordinances subject to varying interpretations.

Some of Minobe's younger contemporaries, albeit only a few, pointed out the incompatibility of Article 9 and the bill of rights. For independent police ordinance power is the residue of an absolutist state, epitomising the arbitrary executive power attributed to a monarch, according to Nakano Tomio.<sup>149</sup> However, in Europe the progress of the idea of civil liberties after the French Revolution had gradually subjected such power to civil control, which meant statutory regulations. Legislative power emerged as a new power strong enough to challenge monarchical executive power. With this shift in emphasis, the meaning of law also changed. Law no longer meant ordinances imposed by a ruler, but statutes enacted by Parliament.<sup>150</sup> Thus in European constitutional history, bills of rights had eliminated the operation of arbitrary executive powers, at least theoretically.<sup>151</sup>

Article 9 of the Meiji Constitution is an exception in this respect. Nakano speculated that the framers of the Constitution, who consulted the Germanist theory of Stahl, Gneist, Stein and Giron, nevertheless "did not have any clear conception of legislative and police power". Thus he concluded that Article 9 had no real significance, and so could be ignored, saying that the bill of rights listed in Chapter 2 could not be curtailed by police ordinances as Article 9 stipulates.<sup>152</sup>

Yet Article 9 gave Minobe genuine difficulty in assimilating it to his stance. He knew that constitutional principles entailed the protection of civil liberties from arbitrary executive power, but he was also concerned with viable statehood. Thus, following Jellinek, he insists that no individual shall be controlled by the state except in a lawful way. For him the bill of rights of Chapter 2 offers an exemplary list, but only the more significant rights are specified. Therefore he asserts that law is necessary if any civil right which may not be included in Chapter 2 is to be curtailed.

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<sup>149</sup> Nakano asserts that "In the early period of European constitutional history European Governments, especially German Governments, used in practice to issue police ordinances without any express constitutional or statutory authorization" (Nakano, *The Ordinance Power of the Japanese Emperor*, pp. 99-100).

<sup>150</sup> *ibid.*, p. 100.

<sup>151</sup> Even the newer constitutions written under the strong influence of the German constitutional system, including those of Denmark, Russia, Roumania, and Turkey, did not include "an independent police ordinance". See *ibid.*, pp. 100-1.

<sup>152</sup> *ibid.*, p. 110.

However, instead of dismissing Article 9 as incompatible with constitutional principles, he accepts Article 9 as a constitutional “exception”. In a trade-off with principle, Minobe concludes that independent police ordinance power can override the bill of rights in exceptional circumstances.

Here Minobe contravenes the mainstream legal opinion of his time which asserts that citizens can claim only the rights listed in Chapter 2, and that Article 9 cannot intervene in the rights listed in the chapter. Yet Nakano, while agreeing with Jellinek and Minobe that rights are inherent and that restriction of them requires legal sanction, asserts that such an interpretation is valid only under constitutions in which the executive is not vested with independent ordinance power. Therefore to apply Jellinek’s theory inflexibly to a constitution where executive power is given such a large degree of discretion, is untenable. At the same time Nakano is also led to criticise Minobe for providing a theory that accommodates government practice.<sup>153</sup>

However, Minobe’s view of the relationship between the bill of rights and Article 9 was subject to change. Modifications are especially discernible in his growing dissatisfaction with police power. Thus in an essay of 1907 he is keen to endorse the “positive” function of the police in order to “promote the welfare of the people”.<sup>154</sup> Here promotion of the welfare of the people has nothing to do with the infringement of civil liberties, and the police should therefore be allowed to issue ordinances for this purpose. As yet Minobe does not seem to be concerned with a situation in which civil liberties may be infringed in the name of “public peace and order”. At the same time he strongly endorses natural rights, and criticises other scholars, including his mentor Ikki, for claiming that property rights are private rights and therefore ordinances are sufficient for the state to restrict one’s use of one’s own land.<sup>155</sup>

Minobe here is concerned with two things. He is dissatisfied with the common opinion that ordinances can be used to curtail rights outside Chapter 2. He also wants to explain common practices legally. For him, the Meiji Constitution is an accomplished fact, and it is unthinkable to disregard some articles as

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<sup>153</sup> *ibid.*, p. 106.

<sup>154</sup> Minobe, “Rippôken to Meireiken tonô Genkai o ronzu”, *Hôgakukyôkai Zasshi*, vol. 25, nos. 5, 6, and 8, in 1907. The article is included in *Kenpô oyobi Kenpôshi Kenkyû*.

<sup>155</sup> *ibid.*, pp. 10-13.



“unconstitutional”, as Nakano will do 15 years later. In time Minobe became more aware of the defects of the Constitution and began to suggest its change. However, in 1907, his concern was still with how to explain government practices within the Constitution rather with wholesale change.

Here we need to remember that Minobe’s main principle is still that civil liberties cannot be curtailed by any ordinance, and Article 9 is the only exception.<sup>156</sup> He wants to emphasise the exceptionality of Article 9 in order to assert that ordinances cannot override civil rights which may not be included in Chapter 2. At the same time he is inclined to support a “positive state”. Bluntschli had criticised the Kantian definition of the legal state (*Rechtsstaat*) for being too narrow: in that definition, law existed only to protect individual freedoms.<sup>157</sup> Bluntschli held that it diminished the concepts of “public” and “people”. Relying on an organicist theory close to Bluntschli’s, Minobe too recognises the state’s active role for the sake of the general public good.

Clearly then Minobe’s early view reflects the then far-reaching role accredited to the police to run and regulate society. In this essay, he regards the police not as the oppressors of free government but as the “supervisors” of drastic social and economic change. He cites eleven areas where regulations might be rendered unconstitutional unless interpretation allows Article 9 to override the bill of rights: oil provision, bakeries and sweet potato roasting factories, *kankôba* markets, electricity, *yose* entertainment places, theatres, exhibition venues, entertainment halls, cemeteries and burials, and *nagaya* public housing construction.<sup>158</sup> Here we sense the emergence of a society busy with active commerce, industrialisation, mass culture, and urbanisation. The police’s role stretches even to the administration of social services, such as housing and burial practices. Obviously an urban society had existed long before the Meiji Restoration, and various regulations were deemed necessary to restrict people’s every-day lives. Yet such “systematic” and regulatory control of a mass population is new.

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<sup>156</sup> Minobe is aware that this article is peculiar to the Meiji Constitution, and no similar articles are found in the Belgian and Prussian constitutions, two of the major models for the Japanese constitution.

<sup>157</sup> Bluntschli, *The Theory of the State*, p. 68.

<sup>158</sup> Minobe, “Rippôken to Meireiken tonô Genkai o ronzu”, *Kenpô oyobi Kenpôshi Kenkyû*, pp. 8-9.

Hence like the evolution of the press laws, the establishment and evolution of the police reflects the metamorphosis of forms of government. Thus shortly after the Restoration, each *han* domain had remained responsible for maintaining the social order of its respective region. Yet when the Justice Ministry was established in 1871, police authority was concentrated there, and then transferred to the Home Affairs Ministry in 1874.<sup>159</sup> Through various decrees, the police force became that part of the administration responsible for supervising shops and other public operations, even public health. It also extended its functions so as to suppress political dissent during the *jiyûminken* movement. Police stations began to be set up in all municipalities in 1888. This variform function, both administrative and social, was reinforced by the rise of labour disputes and socialist movements after the Sino-Japanese War of 1894-5. Tokkô, a special branch of the police responsible for political activities, were created in Tokyo and Osaka after the High Treason Incident of 1911, and then introduced in other parts of the country in 1928 when the first general election took place after the introduction of universal male suffrage. In this way the police, as well as administering commercial and social activities, increased their role as a “safety-net” so as to contain public discontent.<sup>160</sup>

At this stage Minobe seems to accept the role of the police as “administrators and supervisors” of commercial, industrial and social activities. For instance, he does not seem to be concerned with the Gyôsei Shikkô Hô enacted in 1900, which allowed the police to detain people without a warrant issued by a court to counter the disturbance of public safety (*kôan*).<sup>161</sup> In effect Minobe’s belief in a positive state and his recognition of the “social” role of the police had caused him to underestimate the discretionary nature of independent police ordinances, the same forces that would

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<sup>159</sup> In October 1871 police units were created modelled after the British police system, first in Tokyo and then in various parts of the country. Police forces become more centralised after police authority was transferred to the Home Affairs Ministry in 1874 based on Kawaji Toshiyoshi’s report on police provision in France and Prussia. See Ôe Shinoo, “1880-1900 Nendai no Nippon: Teikoku Kenpô Taisei”, *Iwanami Kôza, Nihon Tsûshi*, vol. 17, *Kindai* 2 (Tokyo: Iwanami Shoten, 1994), p. 14.

<sup>160</sup> For some Meiji leaders, such as Iwakura Tomomi, the police were expected to play a similar role to the military to maintain domestic order under the leadership of the emperor. Ôe Shinoo quotes Iwakura in 1882: “Supported by the Navy, the Army and *keishi* (police) that are the recipients of the emperor’s benevolence and are supposed to play an important role for *kokka* (the state), [the government] must be able to face the people strictly (*shitani nozomi*) and impress them deeply (*senritsu*)” (see *ibid.*, p.14).

<sup>161</sup> For the Gyôsei Shikkô Hô (Administrative Enabling Law), see Elise K. Tipton, *The Japanese Police State: The Tokkô in Interwar Japan* (Honolulu: University of Hawaii Press, 1990), pp. 60-1.

eventually undermine the concept of law and of civil liberties, and of which he himself would later become a victim.

However, in an essay of 1913, Minobe significantly modifies his wholehearted endorsement of police action for the promotion of the welfare of the people.<sup>162</sup> Here he concentrates instead on the abuse of police power. Now he is much more circumspect that the power enjoyed by the police will always be employed for benign and supervisory purposes. Active here are a variety of factors: Minobe's involvement in the Goken Undô (the movement protecting the Constitution) in the Taishô Political Crisis of 1913, his increased exposure to academic debate about the role of the police in Germany and other constitutional European countries,<sup>163</sup> and his recognition that as Japanese society had become more pluralistic it was impossible to move a diverse range of individuals in any one direction.

Here too he asserts contentiously that while a trend may be injurious to society in the short term, it may nevertheless advance the common good. And he recognises that individual needs sometimes may take precedence over that good and advance it. Such views will later sustain his criticism of the press laws. Now, asserting that it is not the police but politics that co-ordinates the conflicting interests of society, he reverses his previous claims, and says,

... It is an obligation for the people not to create problems serious enough to damage the social and public peace (*shakai kôkyô no chitsujo*) as long as they form the social life (*shakai seikatsu*) together. Therefore it is an obligation for the state as a guardian of the public good to use its power to stop people from harming their own society.... On the other hand, it cannot be said that the state has a compulsory obligation to force people to act in a certain way so as to promote social progress and facilitate general welfare. Social progress can be made only by individual efforts. Individuals have social and ethical obligations to contribute to social progress, according to their own talent and ability. However, talent and ability vary from person to person. It is not appropriate to use law in order to force the people to act in certain ways.<sup>164</sup>

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<sup>162</sup> Minobe, "Keisatsuken no Genkai o ronzu", *Hôritsugakkai Zasshi*, vol. 31, no. 3, March 1913, pp. 87-115.

<sup>163</sup> *ibid.*, pp. 102-3. Here Minobe mentions Otto Mayer *et. al.*

<sup>164</sup> Minobe, "Rippôken to Meireiken no Genkai o ronzu", *Kenpô oyobi Kenpôshi Kenkyû*, p. 101.

Thus Minobe effectively dismisses his previous claim that police power can be imposed on the people in order to promote their welfare. The jurisdiction of the police should be restricted to the removal of “problems” (*shôgai*) in society. In Minobe’s definition, society is now a self-regulating public sphere that defies the state’s intervention.

Ishida Takeshi, investigating the change of meaning of “*kokka*” (the state) in Japanese political discourse, assumes that the ability to distinguish the state and society conceptually was proportional to one’s criticism of statism. For the role of the police and of administration had often blurred in Japan’s post-Restoration nation-making. Thus the centralisation of power had required the establishment of a national police force to contain domestic discontent. Nevertheless, social and economic change had begun to make for a less pliable people. Indicators of change are the Taishô democratic movement and the growing numbers of politically active workers in the 1910s.<sup>165</sup> As arbiter, translator, and assessor, responding fluidly to the pressure of events and unafraid of modifying his views, Minobe plays his part in the general movement towards a more autonomous society.

The conflict between constitutional principles and practical needs remains in Minobe’s thought, however. And the tension is everywhere apparent, in *Kenpô Satsuyô*, *Chikujô Kenpô Seigi*, and *Nihon Gyôseihô*, as well as *Nihon Kenpô no Kihonshugi*. In *Chikujô Kenpô Seigi* of 1927, Minobe’s adherence to the “positive” role of the police was further weakened. He now refers to Article 9 as “an extreme exception to constitutional principles”, and says “the intention of the article is vague, which is regrettable. It is difficult to interpret it accurately”.<sup>166</sup>

In *Gyôseihô* of 1940, published after the Minobe Affair, Minobe entirely drops his adherence to the police’s “positive” role. Thus if Article 9 seems to allow

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<sup>165</sup> Ishida Takeshi, “Kuni towa nanika”, p.175. Indeed the Taishô period sees major changes in private relationships and also relationship between authority and the individual. For instance, Carol Gluck notes, quoting the political scientist Ukita Kazutami: “Already in 1912, as one commentator argued, in an age when families did not always live together and husbands and wives worked in different factories, the five Confucian relationships enumerated in the Rescript on Education no longer sufficed to encompass social morality” (Gluck, *Japan’s Modern Myths*, pp. 281-2). In 1916, the Supreme Court upheld a claim for compensation filed by the bereaved family of a child who was killed in an accident in the sports ground of a primary school run by a municipal government and ordered the authority to pay compensation. This is believed to be the first case in the country’s legal history in which a court recognised authority’s negligence and ordered it to compensate citizens for the damage it had incurred. See Ienaga, *op. cit.*, p. 196.

<sup>166</sup> Minobe, *Chikujô Kenpô Seigi*, p.228.



three types of police ordinances (aimed respectively to enforce the existing laws, maintain public peace and order, and to promote “the welfare of the subjects”), then this third type of ordinance is incompatible with the nature of the relevant legislation.<sup>167</sup> Here Minobe becomes more acutely aware than ever of the potential clash between civil liberties and the powers granted to the police in the name of the emperor. Police powers should not be exercised freely, and their discretionary use must be legally restricted. Clearly distinguishing between state and society, with the latter having its own working mechanism,<sup>168</sup> Minobe urges that such powers should not be used to implement government policy and that the essential purpose of the police is to contain the lapses of society.<sup>169</sup> Furthermore, the police must not violate individual privacy, unless one’s behaviour directly damages the public peace. And any pre-emptive restriction of freedom must always be in keeping with the price of inaction. Hence the police should always maintain “a sound, common sense of society”, and obey due process of law.<sup>170</sup>

By this point Minobe clearly recognises the misuse of state power as exercised either by police or administration. That power becomes illegal when it is exercised beyond the volition set by law.<sup>171</sup> Minobe’s alertness to discretionary power fuels his protests against the encroachments of political authority on personal

<sup>167</sup> Minobe, *Nihon Gyôseihô*, vol. 2 (Tokyo: Yûhikaku, 1940), 1941 impression, p. 64.

<sup>168</sup> This claim may be a natural consequence of Minobe’s earlier position, and also reflect Jellinek’s view that the state can be discussed both as social phenomenon and legal concept. Miller, however, notes : “For Minobe, as for Jellinek, the distinction between the juristic and the social or political aspect of the state was a matter of analytic technique rather than an absolute... His ideas of law and state, here and elsewhere, are tenuously anchored to ‘reality’ in the form of ‘society’... It can hardly be said that he came to grips with the problem of synthesis between sociological and juristic concepts. The sociology upon which he founded his jurisprudence was itself a purely conceptual system, unconcerned with empirical investigation... He could attack Kelsen for failure to recognise the nature of law as ‘social reality’ and the nature of jurisprudence as a social science, but he himself failed to grasp the reality of the social phenomena underlying constitutional systems” (Miller, *op. cit.*, pp. 46-7). I agree with Miller that Minobe’s grasp of society is incomplete and that at times he fails to locate existing problems in society that are closely related to constitutional principle: his mixed attitude towards Article 9 is one such example. Yet Minobe was constantly searching for what he thought better relationships between state and people, and his emphasis on society should be understood as part of a continuous process of thought.

<sup>169</sup> Minobe discusses the restrictions in *Nihon Gyôseihô*, vol. 2, pp. 70-9.

<sup>170</sup> Minobe says, “It would be unacceptable abuse of police power if the police interfere in the life-styles of individuals because they could not overlook the slightest possibility of damage, when common sense suggests otherwise” (*ibid.*, p. 77).

<sup>171</sup> Minobe explains administrative discretion as “delegation” of legal rights to the administration to determine people’s rights and obligations within the limit of law (Minobe, *Nihon Gyôseihô*, vol. 1, p. 24). He also says that permissible administrative discretion is subject to legally binding power, which means that administrative action will become illegal if it exceeds the boundary drawn by law. See *ibid.*, pp. 167-71.



freedom. That personal freedom Minobe cherished dearly. Thus, as early as 1908, in an essay on the repressive Publication Law,<sup>172</sup> Minobe's concern went beyond conflict between state and society, to conflicts over underlying values. Thus values in society cannot and should not be determined by bureaucrats. There should be an appropriate balance between such cultural values and the need to maintain social order: the role of the state is to protect the public peace, and yet freedom of publication is "one of the most important freedoms in a civilised society". Minobe sees the present system, whereby a Home Minister can ban publications unilaterally, as grossly unjust.<sup>173</sup> Hence, in a later article, Minobe defends press freedom as a guarantee of social development. "Any social activity cannot avoid producing some harmful effects... Printed materials are no exception." But censorship is always a sign of weakness, and the arts have a value beyond the convenience of bureaucrats. "It is regrettable to see fine work banned from publication, which will hinder the progress of culture."<sup>174</sup> So in 1919, Minobe calls for revising the law so that courts can no longer ban the publication of newspapers (Article 43), and that Army and Navy ministers cannot prevent newspapers from carrying articles about the country's military and diplomatic affairs at their own volition (Article 27).<sup>175</sup> However these provisions remained intact until the end of World War II.

Nevertheless, Minobe's tendency to rely on bureaucratic rationality in these matters is clearly recognisable in a second essay of 1910 on the Publication Law. Here he proposes the establishment of a bureau that will investigate new publications, run by bureaucrats and assisted by university professors.<sup>176</sup> Such a bureau might ban publication, but publishers should be allowed to lodge complaints with the bureau, and then with an administrative court. However, it is difficult for

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<sup>172</sup> Minobe, "Hôritsujô yori mitaru Hatsubai Kinshi Mondai", *Kokkagakkai Zasshi*, vol. 22, no. 8, 1908, pp. 991-1000. Minobe begins the article by saying that he is writing with great concern about the government's intensifying censorship. It has already banned some "major" works it deemed "injurious to public morals", which include translations from some of Molière's collected works, a translation of Zola's "Paris", and some works by Ihara Saikaku.

<sup>173</sup> In 1897, Parliament succeeded in eliminating a Home Minister's unilateral right to ban the publication of newspapers from the press regulations. However, the government used an emergency imperial order to reinstate the right in 1905. A similar right to ban publications was maintained in the Publication Law throughout the pre-war period. See Okudaira Yasunori, "Ken'etsu Seido", *op. cit.*, pp. 148-52.

<sup>174</sup> Minobe, "Shinbunshihô Kaisei Mondai", *Chûô Kôron*, vol. 367, no. 3, May 1919, p.46.

<sup>175</sup> *ibid.*, pp. 49-50.

<sup>176</sup> Minobe, "Shuppanhō Kaisei Shigi", *Hôgaku Shinpō*, Chûô Daigaku Hôgakkai, vol. 20., no. 6, 1910.

administrators to be neutral over their own judgement, for they are part of a hierarchical system, whose efficiency depends on how well they execute their superior's decision. And if the judicial system is insufficient for people to challenge administrative action, this problem of checks and balances will be compounded. Minobe's emphasis on what he calls the "objective facts" in bureaucratic decision making is valid only as long as objectivity is ensured as part of the legal system through independent judicial review of administrative measures.<sup>177</sup> The pre-war context appears to be short of such assurances. Here the criticism that Minobe was not ruthless enough to appraise the system thoroughly seems justifiable.

Further flaws of assessment are also apparent in that Minobe does not recognise judicial review of the Constitution. "With regard to our country's Constitution", he says, "the task of maintaining it is entrusted to government and Parliament alone. Even if unconstitutional laws are enacted, there is no way of vetoing such [illegal] legislation".<sup>178</sup> Instead, Minobe proposes reliance on people's "sound" judgement. "Thus it is particularly necessary to prevent violation of the Constitution by means of the people's sound understanding of the Constitution and sound public opinion."<sup>179</sup> However such claims are fragile unless backed by firm institutions and working practices. The demise of constitutional constraints in the 1930s demonstrates the limits both of Minobe's assessment and of the resources on which he relied.

Another weakness in Minobe's vision of discretionary power is that his view of the role of administration still depends significantly on patronage. Thus, he says, the provision of certain rights or benefits for the people is at the discretion of administrators. He is thinking of such things as the appointment of civil servants, approval of naturalisation, licences for public corporations, permission to use public spaces, and public subsidies.<sup>180</sup> However, in such arrangements, the relationship

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<sup>177</sup> Minobe says, "Discretionary power should be exercised by recognising objective facts. As civil courts rule whether a contract is valid or not by recognising whether it damages public mores, or whether it damages public order, administrators should judge the aim of a particular law based on objective circumstances and a socially acceptable common sense" (Minobe, *Nihon Gyôseihô*, vol. 1, p. 168).

<sup>178</sup> Minobe, *Chikujô Kenpô Seigi*, p. 31.

<sup>179</sup> *ibid.*, p. 31.

<sup>180</sup> Minobe, *Nihon Gyôseihô*, vol. 2, p. 171. Minobe does say that administrators have to give a licence as long as the anticipated operation of a business does not harm the public good (*ibid.*, p. 168).

between administrators and ordinary people cannot remain that of equals. No matter how strongly Minobe emphasises the existence of an area where state and people can confront each other as equal “persons,” the exercise of discretionary power will tend to subvert such idealised arrangements. This is particularly so when judicial review of administrative measures is insufficient.

Yet despite these flaws, and given the amorphous stage of the legal system, particularly with regard to such practices as elections, Minobe’s efforts to define public authority should be always seen as part of the evolving exercise in national self-definition of Japanese society. The society in which Minobe lived was in deep flux. The scale of social and institutional change demanded yet also thwarted the emergence of a common political community. In such circumstances the “law” played a central role in both shaping and conceiving the new community from the very beginning of the Restoration. In such social conditions Minobe knew that creating an effective superstructure was just as important as creating the economic base.<sup>181</sup>

In this sense, Marxist criticism of Minobe’s stance as “incompletely democratic and bourgeois” seems not entirely convincing. For such criticism ignores the serious efforts made by Minobe and others both to define the “public” sphere, and to negotiate the divisions of society. Minobe’s definition of rights may be incomplete for those who have lived with the post-war Constitution that endorses popular sovereignty, legal equality and inalienable rights. And yet Minobe faced an enormous challenge, confronting the national idea at a time when concepts of state and people were more than usually inchoate and at odds. The real strength of his theory remains the claim that “no power is beyond the law”, behind which lies the belief that the people have rights which the state cannot revoke. Minobe’s concept of

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<sup>181</sup> Engels himself warned against simple application of the dichotomy between base and superstructure. He says, “The economic situation is the basis, but the various elements of the superstructure: political forms of the class struggle and its results, to wit: constitutions established by the victorious class after a successful battle, etc., juridical forms, and then even the reflexes of all these actual struggles in the brains of the participants, political, juristic, philosophical theories, religious views and their further development into systems of dogmas, also exercise their influence upon the course of the historical struggles and in many cases preponderate in determining their form. There is an interaction of all these elements in which, amid all the endless host of accidents (that is, of things and events, whose inner connection is so remote or so impossible of proof that we can regard it as non-existent, as negligible) the economic movement finally asserts itself as necessary” (Engels, “Letters on Historical Materialism”, in Robert C. Tucker (ed.), *The Marx-Engels Reader*, second edition, New York: W. W. Norton & Company, 1978, pp. 760-1).

rights is therefore central to his effort to define a public sphere which will encompass national unity and free government. Similar efforts are observable in his view of representation (*daihyô*), where he directs his attention to political arrangements. In the next and last section of this chapter we will therefore deal with Minobe's ideas of valid political representation.

## 2.6. Minobe's ideas of political representation

One way to approach Minobe's position on representation is to probe once more his inheritance from Jellinek. Thus in his *Nihon Kenpô*, Minobe explores the general theory of law and the state based on the methodology provided by his mentor.<sup>182</sup> Nevertheless he departs from Jellinek at several points, and the relationship between the state and its organs is one such example.

Minobe criticises Jellinek for claiming that the relationship between the state and its organs differs from the legal relationship between a person and his proxy. According to Jellinek, the state and its organs are "organically" united with each other.<sup>183</sup> One is indispensable for the other's existence. The "personality" of the state emerges through its organs. In this sense, the state-organ relationship differs from any kind of representation, in which representative and represented remain separated. This view was commonly accepted, but Minobe disagrees. "Despite the common view, I believe it is fair to assume that the organisation-organ relationship and the proxy arrangement are basically the same. The only difference is that under normal

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<sup>182</sup> Miller describes Minobe's *Nihon Kenpô* as his *Allgemeine Staatslehre*, referring to Jellinek's major work (Miller, *Minobe Tatsukichi*, p. 45). "Minobe's statement of the purpose of the juristic method as clarification of the relationship between law and the objective and subjective phenomena constituting the concrete life of the state was true to the spirit of the *Allgemeine Staatslehre*" (*ibid.*, p. 46).

<sup>183</sup> Jellinek says: "In order to recognise the legal arrangement of organs of the state, we have to distinguish its organs and the people that carry them. The organ as such does not possess personality towards the state... The state and organ are one. The state is only able to exist through its organs. If we take organs away, the state does not remain, and with the organs carried away, only legal emptiness remains. By this means, the organ-relationship differs from any kind of representation. Normally the representative and the represented remain as two individual parties, but the Union and the Organ do remain as a single person" (Georg Jellinek, *Allgemeine Staatslehre*, reprinted in 1966, Verlag Dr. Max Gehlen Bad Homburg V.D. Höhe, Berlin, Zürich, pp. 559-60).



circumstances, organs exist within the organisation and constitute it, while a proxy always exists outside the person whom the proxy represents.”<sup>184</sup>

Minobe distinguishes representation (*daihyô*) from “presentation” (*hyôgen*).<sup>185</sup> Some scholars, such as Gierk in Germany and Dr. Kakei in Japan, have asserted that organs neither represent the organisation nor can be a substitute for it, because they merely transmit the personality of the organisation. Thus organs are presentations or depictions (*Darstellen*) of the organisation, but do not represent it. Minobe disagrees. People who constitute the organs of an organisation may be called its representatives, because their will is recognised as the will of the organisation.

Such representation has long existed in Japan, according to Minobe. In traditional Japanese usage, such people are called *sôdai*, and they act as members of their respective organisations on behalf of the whole. Thus Article 53 of the civil code says that a director represents a corporate body with regard to its administration, while Article 87 of the municipality law stipulates that a mayor represents his city.

Accordingly Minobe dismisses the concept of presentation in his interpretation of the relationship between the state and its organs, and defines state organs as political representatives of the state. If this formulation is applied to his Emperor-as-Organ theory, the emperor is the country’s constitutional representative.

Such a definition of the emperor’s status has potent implications. For Minobe, it was easy to describe the emperor as the state’s representative, since following Jellinek he distinguished between social and legal definitions of the state. However, Minobe’s theoretical arguments met strong resistance, and the view that “the emperor is not a representative but the state itself” became a major ideological criticism of the organ theory in the mid-1930s.<sup>186</sup>

This persistent resistance has a historical dimension. For the “modern” centralised political authority was created initially by deliberately setting the emperor

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<sup>184</sup> Minobe, *Nihon Kenpô*, p. 85.

<sup>185</sup> The Japanese word “*daihyô*” is a translation of representation in English, according to the *Kaiteizôhô Tetsugakujii*. The word soon appeared in legislation, including the municipality law (*shisei oyobi chôsonsei*) of 1889 and the civil code.

<sup>186</sup> For instance, criticising Minobe’s theory, Yamamoto Teijirô, a member of *Seiyûkai*, told the House of Representatives on 12 March 1935 that the emperor and the state were inseparable. See Miyazawa Toshiyoshi, *Tennô Kikansetsu Jiken*, vol. 1, p. 157. His views reflected and confirmed the new orthodoxy.



before the public. Thus the emperor's role as national symbol was central to the Meiji leaders' state-making. The Meiji leaders knew that they needed not only military power and an efficient bureaucracy but also symbols capable of creating "national" sentiments: a genuine indigenous nationalism was absent. Thus as early as May 1868, Kido Takayoshi proposed that the emperor should travel to various parts of the country to be seen as the new leader of the country.<sup>187</sup> Kido also proposed the issuance of various imperial orders and the use of the *hinomaru* flag, as well as the construction of new warships.<sup>188</sup> The creation of new symbols was an urgent task for the Meiji leaders to unify the country and legitimise their rule.<sup>189</sup>

At the same time, for the Meiji leaders, the emperor represented an opportunity to create a new "public" space to be formed in contrast to the predestined "natural" order.<sup>190</sup> In that new space, political power was to be man-made, not given. Therefore the early Meiji leaders felt no conflict between imperial rule and their emphasis on *kôron* (public debate). The emperor became a powerful symbol of the new country precisely because he was able to consolidate the forces opposing the Tokugawa shogunate, and was therefore aligned with the opposition.

In this way the emperor was presented as enjoying both symbolic and bona fide political authority: his position at the heart of the nation was both legally and metaphorically endorsed. Yet the divided nature of his status soon created serious difficulties for his sponsors when they tried to devise a constitution in which he would be a constitutional monarch. For instance Inoue Kowashi opposed the itemisation of the imperial prerogative since it would weaken the symbolic authority of the emperor, which he claimed existed regardless of the introduction of a

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<sup>187</sup> Kido writes in his diary on 20 May 1868: "In the morning I prepared drafts of three proclamations to be announced before the Imperial return to Kyoto: 1) that his Majesty will travel to various parts of the country; 2) that after the Imperial return to Kyoto he will move into the Nijô Castle, and 3) that, hereafter, he will go to Naniwa frequently to govern the realm personally as conditions require." See *The Diary of Kido Takayoshi*, Volume I: 1868-1871, translated by Sidney Devere Brown and Akiko Hirota (Tokyo: Tokyo University Press, 1983), p. 19.

<sup>188</sup> See *ibid.*, p. 32.

<sup>189</sup> Cf. Carol Gluck: "In the first years after the Restoration, from 1868 to 1881, the new government invoked the imperial institution as the symbolic center of the unified nation and displayed the young Meiji emperor as the personal manifestation of the recently wrought political unity" (Gluck, *Japan's Modern Myths*, p. 73).

<sup>190</sup> Matsumoto Sannosuke likens the post-Restoration creation of imperial absolutism to an assertion of Hobbesian absolutism. Hobbes had ushered in the modern view of the state as an artificial community, departing from the scholastic view of natural order. See Matsumoto, "Tennôsei Hôshisô" (part I), *KNKH*, vol. 10, 1961, p. 6.

constitution.<sup>191</sup> Thus he proposed “presenting the emperor’s authority to the public” in the *preamble* to the Constitution.<sup>192</sup> On the other hand, some writers distinguished the emperor’s official duties and his conduct as a private person, and insisted that the emperor should be held accountable for civil cases regarding assets.<sup>193</sup> The result was incoherence. In the preamble, Articles 1 and 3, imperial authority is presented to the public as “unbroken for ages eternal”, and no article of the Constitution holds the emperor accountable for civil cases. Yet the Constitution stipulates that the emperor represents the people, which means he exercises his rights as sovereign according to law.

The emperor’s role both symbolic and political was thus central to Japan’s nation-making, and was deliberately used to promote nationalist feeling. However, when the initial aims of state-making shifted from national unification to national expansion and management of society, this constructed nationalism, embodied in the person of the emperor, became increasingly problematic. Thus, once the structures of government were in place, the emperor’s role modulated inexorably into that of a figure of authority. This change reflects the metamorphosis of the forces of Japanese nationalism, fuelled by the desire for modernity and self growth, but becoming gradually more imperialistic and authoritarian. As we have seen in Chapter 1, Fukuzawa’s “*tenkô*” is a response to such change. For the emperor’s symbolic role increased as government leaders met the difficulties of running the country, and he was always placed at the centre of national endeavour in an unpredictable period. Amid deepening social anxiety, he was promoted as a centre of purpose and security. Thus, by the early 1930s, as political parties, business people, and even the military were found inefficient and untrustworthy, the people might easily turn to the emperor

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<sup>191</sup> He says: “In rhetoric, general terms are used to describe the whole. On the other hand, many specific analytical words are used to describe parts. Enumerating the imperial prerogative means dividing it, which damages the essence of the prerogative. It will weaken the prerogative through a composite of descriptions, each of which can sway people’s emotions. In this sense, enumerating the imperial prerogative appears not profitable but damaging” (Inoue, “Kôan”, in Kenpô Shiryô Kankôkai (ed.), *Hisho Hensan Kenpô Shiryô*, vol. 1, Tokyo: Gyôbunkaku, 1934, pp. 328-9). The Japanese word Inoue used for “a composite of description” is “*ishô*”. “*Ishô*” is one of many words created during the Meiji period that soon became obsolete. Yet we can speculate on what Inoue means by reversing the two kanji characters used for “*ishô*”. For “*shô*” means a composition of a kanji character by combining more than one character.

<sup>192</sup> See Inada Masatsugu, *Meiji Kenpô Seiritsushi*, vol. 2, pp. 11, 48-9.

<sup>193</sup> Inoue Kowashi, “Otsuan”, included in Inada, *ibid.*, pp. 138-9. According to Inada, this passage was actually written by Itô Miyoji, one of Inoue’s colleagues in the drafting of the Constitution.

as a symbol of the underlying rightness of their world: the myth helped to underwrite the status quo.

Furthermore, the emperor's symbolic role is incorporated into the executive power as *taiken* in the Meiji Constitution, which simultaneously created Parliament. And the divided alignments of political power are reflected in two different manifestations of representation in the Constitution: state ministers as representatives of the emperor, and Parliament as representative of the electorate. The former signals the emperor's symbolic power and is aligned with absolutism, while the latter is inseparable from a communicative Parliament.

When seen from the viewpoint of European constitutional history, in which absolute authority was gradually contained by representative government, what is remarkable about the Japanese constitution is that it allows two competing powers, symbolic and representative, to claim their legitimacy simultaneously. The parallel presence of symbolic and representative authorities in the constitution encapsulates Japan's modernisation process in the political and legal structure, ensuring as it does the survival of absolutism in representative government.

By contrast Habermas explains the process in Europe by which political authority "presented" to ordinary people was transformed into power that "represented" them through Parliament and the press. This process signals the emergence of a civil society where power no longer means domination but rational authority created through public debate. In feudalism, says Habermas, political authority is linked with social status, and thus "permeates". Absolutism means the growing presence of the state as "the sphere of public authority", supported by a standing army and a permanent bureaucracy. During this period, however, civil society nonetheless emerges as a new debating public of private people critical of state authority. State and people compete with each other, but each in the name of the "public".<sup>194</sup>

Prompting such transformation was economic change, such as the growth of a commodity economy, a market and the availability of work, that allowed private people to gain economic independence and social mobility. But the power of public debate was decisive. Hence the growth of the press and the institutional

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<sup>194</sup> Habermas, *The Structural Transformation of the Public Sphere*, p. 19.

strengthening of Parliament (in such things as the elimination of censorship and the establishment of cabinet government) also accelerated “a new stage in the development of the public sphere”.<sup>195</sup> For “*public debate was supposed to transform voluntas into a ratio that in the public competition of private arguments came into being as the consensus about what was practically necessary in the interest of all.*”<sup>196</sup>

Thus the development of capitalism, a free press, and an institutional centre of capitalism (Parliament) prompted “the public’s gradual assumption of the functions of political power”. Through “the critical debate” of an active public, political parties assumed their function as representatives of competing opinion. In this way Habermas emphasises the role of communicative institutions, Parliament and press in particular, as major forces in the transformation of absolutism into representative government.<sup>197</sup>

However when compared with the development of parliament in Europe, particularly in Britain, Japanese representative government had serious problems. First, the emperor’s ambiguous status tended to promote conflict between patriotism and rational debate: the distinction between the exercise of “power” and “responsibility” for action would easily blur. Second, various press laws and laws to hinder political activities were detrimental to the growth of a communicative public. Third, rapid social change made it difficult for the people to locate “a common space” where they could share their political concerns. The early stages of Japan’s capitalist economy, in which the core of society was dispersed and agrarian, were not conducive to such procedures. At the same time rapid industrial development had created divisions between cities and the countryside, while the strategic division of society imposed by government, between “*kan*”, those working for the state, including bureaucrats and professional soldiers, and “*min*”, those outside that sphere, also hindered the birth of a common, political community. In a society where change was both swift and far-reaching the ability to define what was shared was not easy.

Nevertheless, intense debates over the choice between absolutism and parliamentarianism did take place, transcending constitutional arguments. The debates focussed on appropriate forms of government, the definition of sovereignty,

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<sup>195</sup> *ibid.*, p. 58.

<sup>196</sup> *ibid.*, p. 83. Emphasis by Habermas.

<sup>197</sup> *ibid.*, p. 63.

and the role of the emperor and of the people. Such debates intensified as Japanese society became more pluralistic, and may be seen in the active social criticism levelled at government by socialists, anarchists, and communists, and in the growing demands of workers, tenant farmers, women and other minorities for recognition of their rights. These continuous debates reveal the resilient aspirations of many Japanese to create a “rational authority”, rather than one dictated by reasons of state. Such efforts were made with a clear awareness of the constant social changes spurred by both government and social forces. Minobe’s theory of political representation reflects his attempt to assert “rational authority” against this background of social ferment.

Minobe’s organ theory is thus not an attempt to justify the unity of the state, but an attempt to define appropriate political representation by giving organs their own separate identities. Hence the expression *hyôgen* (presentation) is not acceptable for Minobe, because it would damage the independence of those organs.

This conceptual confusion between presentation and representation as the fundamental character of political authority is also common among German legal positivists, such as C. F. von Gerber, one of Laband’s contemporaries, who advocated the monarchy-as-organ theory. Minobe escapes from similar confusion because of his adherence to the idea of political representation.<sup>198</sup>

For Minobe, the idea of representation is crucial, and recurs in his thought. This is partly because his approach is functionalist. Administrative functions and their relationships must be explained in concrete and specific terms. Only “representation”, not “presentation”, is adequate to do this. Putting aside social and historical definitions of the state, Minobe preferred to concentrate on the state’s pragmatic purpose. Hence his Emperor-as-Organ theory asserts that state power exercises its rights through its organs. And the state is “represented” by its organs, including the emperor. Minobe defines both state and organs as legal persons, and tries to explain the relationship between them as representation rather than confluence as advocated by Gierke and Jellinek.<sup>199</sup>

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<sup>198</sup> Richard Minear notes that Gerber “wanted to give scientific expression to the will of the state, yet he was not ready to discard the traditional concept of the rights of the monarch. Having spoken of the monarch as ruling subject, he could hardly escape dealing with the people as ruled objects” (see Minear, *Japanese Tradition and Western Law*, p. 45).

<sup>199</sup> Minobe, *Nihon Kenpô*, p. 85.



More importantly, Minobe's concept of representative government is closely related to his interest in the legitimisation of power that involves the will of the people (*min'i*). He is interested in the process by which individual opinions are "transformed" into the will of an organisation, and assumes that law and Parliament are central to this process. Thus the Emperor-as-Organ theory implies that the emperor's political functions are legitimate only when he exercises them according to law, and law is intrinsically linked to Parliament. In his 1905 essay Minobe already argues that Parliament must represent the people and indicates that legitimate authority must have the people's mandate. Thus Matsuo Takayoshi asserts that Minobe was the first person in the country to clarify the legal relationship between people and Parliament.<sup>200</sup>

This linkage between legitimacy and popular participation through parliamentary representation remained the cornerstone of Minobe's liberalism, setting him apart from the mainstream legal experts of the time both conservative, such as Hozumi, and positivist.<sup>201</sup> Clearly if law is to be understood as a set of prescribed norms, the claim that parliamentary representation is a concept legally valid inevitably has some aspects of speculative argument.<sup>202</sup> Yet by combining politics and law, and by recognising value judgments as a valid contribution to law making, Minobe became more attentive to shifting social values than many of his contemporaries. Such an attitude sustained his inquiry into the validity of the political system, including the electoral system, and it also enabled him to modify his opinions about other democratic values such as legal equality.

His defence of the Hibiya Riots of 1905 evidences how central the will of the people was to his understanding of legitimate power. Minobe asserts that the riots

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<sup>200</sup> Matsuo, "Minobe Tatsukichi", p. 176. Matsuo here refers to Minobe's two essays, "Gikai no Kokuhôjô no Seishitsu ni kansuru Ichishinsetsu", *Kokkagakkai Zasshi*, no. 10, 1903, and "Gikai wa Kokumin no Daihyôkikan nari", *Meiji Gakuhô*, no. 5, 1905. The latter is included in Minobe's *Kenpô oyobi Kenpôshi Kenkyû*, pp. 277-87.

<sup>201</sup> Both conservatives and positivists, including Marxists, rejected the claim that parliamentary representation is a legal concept: the former did so in order to discredit Parliament, while for the latter Parliament was incapable of representing the genuine opinion of the people. A positivist criticism of Minobe's concept of popular representation is made by Miyazawa Toshiyoshi, "Kokumin Daihyô no Gainen", in Miyazawa (ed.), *Kôhōgaku no Shomondai*, vol. 2, pp. 253-6.

<sup>202</sup> Thus Minobe resorts to "common sense" understanding of democracy and one's subjective judgment to endorse parliamentary representation. He says: "Representation is an abstract concept... Yet all legal concepts are abstract and subjective... All legal issues depend on how you conceive them, something far removed from their being discussed always objectively" (Minobe, "Gikai wa Kokumin no Daihyôkikan nari" in *Kenpô oyobi Kenpôshi Kenkyû*, p. 287).

were triggered by the government's inability to maintain the trust of the people. For the basis of constitutional government is to respect the will of the people, and the people should be given enough opportunities to express their opinions. Public opinion may be erroneous, and politicians may have to refute it. However, if a ruler uses his power to oppress opinion just because it is antagonistic to his own, that is tantamount to abuse of power and will weaken the foundation of constitutional government. Minobe interprets the riots as the people's protests against the abuse of government power, and sees a resemblance between the immediate local disturbance and historical events such as the French Revolution, the American War of Independence, and the conflict between the king and barons that resulted in the Magna Carta.

Minobe's view echoes the Marxist concept of class struggle, of the evolution of society by conflict between ruler and ruled, and he warns that if government does not listen to the people, the very foundations of constitutional government will collapse.<sup>203</sup> Even as Minobe rejects popular sovereignty and the common ownership of production, he nonetheless projects a Marxist vision of history: history changes because of class struggle, and the ruler who tries to suppress the ruled will provoke only revolution.<sup>204</sup> In this respect, Minobe shares with the Marxists the opinion that the legal system entails artificially installed norms. However, instead of dismissing Parliament as an insufficiently democratic institution, Minobe takes seriously the challenge of making it work more justly.

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<sup>203</sup> Minobe's views are shared by a later generation of historians, including Inoue Kiyoshi, Matsuo Takayoshi and Miyachi Masato, who also see the Hibiya Riots as a popular protest against an indifferent government and as a harbinger of the Taishō democratic movement. However, Okamoto Shumpei challenges "the people's revolution theory", saying that it fails to explain the chauvinistic, nationalist elements in the Riots, evident in the expressive loyalty to the emperor, abundant displays of the national flag and singing of the national anthem among the rioters. Okamoto is more interested in the mass nationalism arising from recent war-time experience in support of the Russo-Japanese War. See Okamoto Shumpei, "The Emperor and the Crowd: The Historical Significance of the Hibiya Riots", in Tetsuo Najita and J. Victor Koschmann (eds.), *Conflict in Modern Japanese History: The Neglected Tradition* (Princeton, N.J.: Princeton University Press, 1982), p. 273.

<sup>204</sup> Ienaga interestingly applies Carr's phrase the "sense of direction in history" to explain Minobe's concept of history. According to Carr, "It is this sense of direction in history which alone enables us to order and interpret the events of the past – the task of the historian – and to liberate and organize human energies in the present with a view to the future – the task of the statesman, the economist, and the social reformer... Our sense of direction, and our interpretation of the past, are subject to constant modification and evolution as we proceed" (E. H. Carr, *What is History?*, Penguin Books, 1964, pp. 121-2). See Ienaga, *Minobe Tatsukichi*, p. 150.

Thus Minobe's emphasis on the will of the people in constitutional government was reflected in his support for the expansion of the franchise and the introduction of proportional representation, when universal male suffrage began to receive broad public attention in the 1910s. Although his interest in electoral systems dates back to the earlier days of his career, he now began to formulate his views of the national electoral system in response to the nation-wide movement.<sup>205</sup> A nascent movement had already started in 1897, when a group was formed in Matsumoto. But in 1911, the House of Representatives passed a universal male suffrage bill for the first time, which was then rejected by the House of Peers. It was not until 1925 that Parliament finally passed the bill along with the Peace Preservation Law.

Minobe's support for universal suffrage does not necessarily stem from a belief in equality but from a growing conviction that Japanese society is moving inevitably towards democracy. Thus he was opposed to universal suffrage in 1911, when the lower house passed the bill, saying that it was not compatible with social conditions. The major change came in 1919, after he had witnessed the Russian Revolutions, the collapse of the German Empire, the global trend for democracy, and the growing democratic demands at home. Now he understands that such a trend is irreversible.

Hence the universal suffrage movement is "a natural consequence of the enlightenment and dissemination of culture, and of global communication. The era when people followed others' rule blindly is already over. These days people are not satisfied without autonomous rule. Professional politicians still deal with practical matters. However, they can run government only because they have the mandate of the people, and it is a prerequisite of modern politics that the people must possess the

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<sup>205</sup> From 1904 to 1919, Minobe wrote the following: "Municipal *tôkyû* elections" *Hôsei Shinpô*, vol. 8, and "Bicameral systems", *Kokkagakkai Zasshi*, vol. 18, in 1904; "Revision of the electoral system," *Kokkagakkai Zasshi*, vol. 19, and "A theory of voting rights", *Kokkagakkai Zasshi*, vol. 19, in 1905; "Damages of a single-seat constituency system", *Hôsei Shinshi*, vol. 10, and "A by-election within a year after the first by-election", *Kokkagakkai Zasshi*, vol. 20, in 1906; "Compulsive elections", *Kokkagakkai Zasshi*, vol.21, 1907; "An outline of the electoral law", *Kokkagakkai Zasshi*, vol. 22, and "Voting rights and one's residency", *Meiji Gakuhô*, no. 125, in 1908; "Proportional representation for the House of Representatives", *Hôgaku Shinpô*, vol. 19, and "Revision of the electoral regulations for the House of Peers", *Kokkagakkai Zasshi*, vol. 23, in 1909; "Revision of the electoral law", *Kokkagakkai Zasshi*, vol. 26, 1912. Minobe was clearly responding to a topic of great importance to him. *Tôkyû* means equal distribution of seats among groups of eligible voters who are divided



right to oversee their action to a certain extent”.<sup>206</sup> Thus Minobe criticises Prime Minister Hara’s electoral reform for it did not give workers the right to vote.<sup>207</sup>

Once he accepted the introduction of universal suffrage, Minobe not only supported the elimination of tax-based eligibility but also campaigned to extend the electorate so as to include students, heads of noble households, teachers of primary schools, Shinto priests, and Buddhist monks. He was also a member of a 25-member committee appointed by the government to discuss electoral reform. And in a meeting of the committee held in 1923, he was one of five members who supported giving voting rights to women.<sup>208</sup>

Minobe had no time for those who criticised universal suffrage as a “foreign” concept. For him Japanese history after the Restoration was a series of upheavals, testimony to the discontent of a people who had no chance to take part in politics and which could lead to armed protest. Universal suffrage must be introduced to preserve constitutional government, since otherwise social discontent will be uncontrollable. “It is not theory but social change that prompts the expansion of the suffrage.”<sup>209</sup>

Thus his support for the expansion of the franchise is motivated by his awareness of the growing influence of the working class in society. Here the criticism that Minobe was less concerned with the expansion of workers’ rights than with the well-being of society may well apply: equipoise rather than strict equality seems so often to inspire him. Nevertheless, Minobe’s support for proportional representation seems to be genuinely motivated by his desire to introduce fairer representative government, and by his concern to harness the opinion of the people.

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according to the amount of taxes they pay so that high taxpayers can maintain their influence in municipal assemblies.

<sup>206</sup> Minobe, “Futsūsenkyō ron”, in *Jiji Kenpō Mondai Hihan [A Critique of Present Issues related to the Constitution]* (Tokyo: Hōsei Jihōsha, 1921), p. 376. The article originally appeared in *Kokkagakkai Zasshi*, October 1919. Minobe remains opposed to popular sovereignty, but supports lifting the asset-based eligibility regulations. Under his proposal, men aged 25 years old or older who have completed compulsory education, make an independent living, and have lived in one district for at least six months should be eligible for voting and elections.

<sup>207</sup> *ibid.*, p. 381.

<sup>208</sup> Matsuo Takayoshi, *Futsūsenkyō Seido Seiritsushi no Kenkyū*, p. 377. Minobe was one of the two members of the five, who supported suffrage for women aged 25 or older, the same age restriction for men. The other three insisted on the age of 30 and a requirement of compulsory education.

<sup>209</sup> Minobe notes: “the general trend of modern politics is to eliminate the privilege of certain classes. Thus, if we restrict eligibility requirements and give the right to vote to a certain group of people, it will be tantamount to the creation of a new class. Therefore, restrictive elections are not acceptable” (Minobe, “Futsūsenkyō ron”, pp. 373-4).

Japan's first electoral system was introduced at the opening of Parliament in 1890, and was based on single-seat constituencies. This was a practical (rather than ideological) decision, since no political parties were then capable of representing a "national" interest because of their short history. Also the Meiji leaders were aware that they could not ignore diverse local interests. The system of single-seat constituencies was suited to their vision of a structure of local government supported organically by the local elite (*meibôka*) rather than by any nation-wide organisation. However, political parties grew so as to take over government by the end of the century, and Prime Minister Itô Hirobumi proposed that the single-seat constituencies be replaced by multi-seat, wider constituencies in 1898. The division of the country into small constituencies, each represented by a single person, was now thought detrimental to party politics, since national interests would not be able to filter into the local level.

Thus the electoral law was revised in 1900 to introduce the new constituencies, while lowering the minimum tax payment for eligibility to 10 yen. In the next two decades, the electorate sharply increased, although its ratio to the whole population remained less than 6 percent until the introduction of universal male suffrage in 1925.<sup>210</sup> However the emergence of Seiyûkai, the powerful party capable of linking local interests to national politics, prompted its leader and Prime Minister Hara Takashi to push through the re-introduction of single-seat constituencies in 1919.

Minobe was then opposed to the existing multi-seat constituency system, because he thought it would hinder the growth of parties, since people from one party had to fight with each other in the same constituency. His preferred alternatives were the single-seat system and proportional representation. However, when Seiyûkai started to reintroduce single-seat constituencies, Minobe argued that the system would favour large parties at the expense of the small. So in an essay of 1919, he urged Seiyûkai to revise its plan, and called for both the expansion of the franchise

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<sup>210</sup> Cities became independent constituencies (urban businesspeople had gained more political voice) in 1902. The number of eligible voters increased to 1.59 million in 1908 from 0.76 million in 1904, thanks to the tax increase to finance the Russo-Japanese War of 1904-05. For the background of the electoral reforms during the late Meiji and Taishô periods, see Mitani Taichirô, "Taishô Demokurashî jôkyô e no Seidoteki Taiô: Shôsenkyokusei an", *Nihon Seitô Seiji no Keisei* (Tokyo: Tokyo Daigaku Shuppankai, 1967), pp. 184-210.



and for proportional representation.<sup>211</sup> Nevertheless, shortly after the article was published, the single-seat constituency system was re-introduced under the Hara Cabinet.

Understandably Minobe wrote two articles advocating proportional representation in 1920 and 1921. As usual, he was in tune with global trends, as the system had already been introduced in Belgium, Switzerland, Italy, France, and Germany. Yet the real focus of the articles was the nature of a Japanese democratic political system.

Minobe's support for universal male suffrage and proportional representation again results from his understanding that democratic demands are now an unstoppable force after World War I. Recent events and sacrifices have intensified the demand for wider political participation. Yet democracy does not depend on whether or not a country is a monarchy or a republic, but on the state's reduction of its own coercive power, and on its willingness to encourage broad, public participation in politics.<sup>212</sup> Social change has also increased the importance of association and therefore people should be given the right to assemble for political purposes. Ample disclosure of the political decision making process, and also if necessary resort to referenda, are key features of democratic government. So in this important article of 1918, Minobe commits himself wholeheartedly to representative government (those elected by the people, *sôdai*, can engage in political affairs), to the right to vote, to a bicameral system of government so as to prevent the concentration of power, to responsible and parliamentary cabinet government, and to the freedom of the people.<sup>213</sup>

Minobe defends representative government, based on parliament, at a time when trust in parliament was declining globally.<sup>214</sup> As C. Schmitt points out in *The Crisis of Parliamentary Democracy*, published in 1923, parliament as an institution

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<sup>211</sup> Minobe, "Senkyohô no Kaisei, sono ichi", *Taiyô*, February 1919, included in "Senkyohô Mondai", *Jiji Kenpô Mondai Hihan*, pp. 335-56.

<sup>212</sup> Minobe never accepted popular sovereignty, however. He objects to using the word "*minshushugi*" for democracy because he says it connotes popular sovereignty and is against Japan's monarchical system. See Minobe, "Kindaiseiji no Minshuteki Keikô" *Jiji Kenpô Mondai Hihan*, pp. 402-5. The article initially appeared in *Taiyô*, 1918 June special issue.

<sup>213</sup> *ibid.*, pp.407-17. "Natural trend" (*shizen no susei*) and "global trend" (*sekai no susei*) are common in Minobe's writing, for he is alert to what is happening in other countries, that is, the West.

<sup>214</sup> The first edition of *The Crisis of Parliamentary Democracy* by C. Schmitt was published in 1923 in Germany.

may not be able to discuss complex issues effectively, since party politics subordinates the national interest to party concerns. Yet Minobe defends Parliament, saying that the problem is not intrinsic, although Parliament has yet to become an institution fully capable of representing the will of the people. Thus, "There is no such thing as the will of the people *per se* that Parliament represents. But people's mistrust of Parliament does not derive from this; rather it results from Parliament's inability to overcome the interests of the capitalist class and listen to the proletariat."<sup>215</sup>

For Minobe, however, implementing the will of the people (*min'i*) is a project just as fraught as that of initiating representative government. For as economic difficulties grew, public distrust of government was directly converted to criticism of political parties, which were seen to be socially indifferent and to exploit the public for the benefit of the business community. This created a dilemma for political parties, as well as for the disenfranchised public, because reform required inspirational force, and the parties were incapable of creating the necessary momentum. Thus, by the mid-1930s, politics was characterised both by a lack of leadership and by a lack of commitment, signalling a political vacuum to be exploited, which it was by fascism. Many of Minobe's proposals in the inter-war period were a means of addressing the prevailing malaise.<sup>216</sup>

Thus he argued that if proportional representation was introduced, election campaigns would be less expensive. But more importantly the method would encourage public debate about issues, not about personalities and ties, for the people would vote for a party, not for a person. "Under the present system, people tend to vote for the person rather than for the party. It is quite common that people vote for candidates who have connections with their relatives or acquaintances without

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<sup>215</sup> Minobe, "Waga Kensei no Shōrai", *Jiji Kenpō Mondai Hihan*, pp. 428-9. The article originally appeared in *Tōhōjiron*, January 1921.

<sup>216</sup> Thus Minobe proposes several remedies, including various institutional reforms, sanction by public opinion, universal male suffrage, proportional representation, open election of governors, the ensuring of Diet members' right to express their own opinions, checks on party funds, more power to Parliament to investigate policies, and reform of the House of Peers. See Minobe, "Wagakensei no Shōrai", *Jiji Kenpō Mondai Hihan*, pp. 438-44. Minobe criticises the House of Peers as "an extremely antiquated system" (*ibid.*, p. 443).

knowing to which party they belong. This is meaningless, and does not comply with the purposes of constitutional government.”<sup>217</sup>

In 1937, after he had been forced to step down as a member of the House of Peers, Minobe published *Senkyo Bassoku no Kenkyû* [*A Study of Sanctions for Violations of Electoral Law*], in which he criticised the stringent election rules for the House of Representatives. His criticism is consistent not only with his life-long concern with the role of law in politics and society, but also with his views of representative government. For if a law is remote from the common sense of the people, it will lose their trust. And an excessively strict law alienates people from elections, and thus from politics in general.<sup>218</sup>

In this culminating statement, Minobe claims that participation in election campaigns is the inviolable right of the people.<sup>219</sup> He focuses on 1934 when an election law for the House of Representatives was revised to tighten the restrictions on campaigns. The revision of the law was prompted by a confrontation between political parties and the bureaucracy. A nation-wide movement to eliminate election graft had taken place under the name of “the campaign to clean up elections” (*senkyo shukusei undô*), organised by the staff of the Home Affairs Ministry. Before the revision, the law made no provision for pre-election campaigns,<sup>220</sup> although only those who were officially authorised, such as candidates themselves, or heads and members of campaign teams, were allowed to engage in campaigning, except for the making of public speeches and contributions to recommendation leaflets. However, the revised law now banned all election campaigning before one’s candidacy was reported to the authority. For Minobe the ban put serious obstacles in the way of public communication. The people, he says, should be allowed to take part in campaigns even if they are not authorised campaigners. At present the law bans even door-to-door campaigning. Thus, “Elections are matters that belong to the people themselves. They are responsible for making their own judgements as to who is the most suitable candidate. In order to make a right decision, they need to listen to as

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<sup>217</sup> Minobe, “Senkyohô no Kaisei”, *Jiji Kenpô Mondai Hihan*, p. 354. Here Minobe differs from Yoshino Sakuzô. Both are critical of the secrecy in government policy making, but Yoshino emphasises the importance of the personality of candidates in a representative government.

<sup>218</sup> Minobe, *Senkyo Bassoku no Kenkyû* (Tokyo: Ryôsho Fukyûkai, 1937), p. 38.

<sup>219</sup> *ibid.*, p. 38.

<sup>220</sup> Official election campaigns would start after candidates reported their candidacy to the authority.

many candidates as possible. In constitutional government it must be their ensured right to discuss politics.”<sup>221</sup>

Minobe then criticises previous rulings by the Supreme Court which interpret the law so strictly that individual freedom is severely hampered. To punish someone for violation of law there must be plausible circumstances: the action must clearly transgress the limits of common sense with regard to socialising and friendship. Otherwise, individual political activities, even those related to elections, should be tolerated. The court is wrong to inhibit private activity, for “the Supreme Court assumes that even when one praises a candidate after listening to his speech and recommends him to his friends, that constitutes violation of the law. But such interpretations are tantamount to forcing a detached neutrality onto all voters, which will result in their indifference to elections. It will damage constitutional government severely.”<sup>222</sup> Minobe staunchly assumes that constitutional government results from public debate, and therefore people are entitled to discuss their own affairs. The imposition of “detached neutrality” will cause only public apathy towards politics.

The court is also wrong to punish members of a party who visit other members to discuss their candidacies (as in the ruling of 3 October 1936). Such a ruling is just as untenable as that which punishes a candidate for visiting the house of a voter and then another several days apart. Fund-raising for election campaigns is legal, despite the court’s ruling of 9 October 1936. The law should be interpreted in such a way that people who belong to the same party and share their political views can act together more freely. For politics is their own affair. Here Minobe clearly challenges authority’s attempt to undermine behaviour which in his view was both legitimate and politically necessary.

However, Minobe’s view of political representation has its own limitations. This is partly because of his limited acceptance of legal equality. His definition of the “public” sphere is still restricted to “qualified citizens” of the state. At times Minobe seems unreceptive to the role of organised labour in bringing about social change. Hence Ienaga criticises Minobe’s view of tenant disputes for his failure to recognise that such actions of solidarity by the proletariat are also part of the creation of a new

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<sup>221</sup> *ibid.*, p. 49.

<sup>222</sup> *ibid.*, p. 49.

vision of society. Minobe on the other hand justifies police intervention in resolving such disputes by saying that they directly affect the social order. Ienaga is therefore led to criticise him for contradicting his own assertions on the rights of workers.<sup>223</sup>

Indeed, Minobe's view of the relationship between authority and the individual reflects his period, when many Japanese, particularly the elite, unquestionably believed in the betterment of the state at the expense of individual freedom. Reaction and reform were by no means exclusive, and often co-existed. Thus Minobe might himself be said to possess a degree of social scepticism, as well as a countervailing sense of social progress underlain by a knowledge of alternative liberal values. These values generally informed his search for an acceptable balance between state power and individual liberties. Thus it is entirely characteristic of him that along with suffrage for women, he called for the elimination of the discriminatory provisions against wives in the civil code in the 1920s,<sup>224</sup> despite his conceptual separation between rights and the capacity for rights, and his acquiescing statement in his *Kenpô Satsuyô* that the fact that women are not given voting rights is simply an exception to the intention of the Constitution. The same person who had said in 1907 that women's natural vocation was domestic and therefore incompatible with politics<sup>225</sup> now insisted that such legal discrimination was socially and morally unacceptable. His adherence to social values had led him to the forefront of the radical criticism of the legal inequality entrenched in the name of tradition.

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<sup>223</sup> Ienaga, *op. cit.*, p. 70. Banno Junji also criticises Minobe for disregarding political equality. "The question is why Minobe regarded manhood suffrage as premature. His argument makes no advocacy of social and economic equality, of course, or even of political equality. Those who put a high value on 'equality' would probably demand that if 'people in society are in fact very unequal', political equality should first be attained, and then social and economic inequality could be corrected by this means. In Minobe's case, the inequality in people's 'character' and in 'ability and knowledge' provides his base for defending political inequality. Minobe can be excused as affirming not economic inequality, but inequality in education and ability" (Banno, *Democracy in Pre-War Japan: Concepts of Government, 1871-1937: Collected Essays*, translated by Andrew Fraser, London: Routledge, 2001, p. 97).

<sup>224</sup> Under the criminal code introduced in 1880, women were more severely punished than men for adultery. Reflecting the practice, the civil code also discriminated against women in divorce. Men could seek a divorce if they had found their wives committing adultery, while husbands' adultery did not necessarily constitute the grounds for women seeking a divorce. In a meeting of a governmental committee debating revision of the civil code in 1925, Minobe proposed a change in the law so that adultery would become grounds for divorce for both sexes. Minobe's proposal was rejected as detrimental to the country's family system and "traditions". See Ienaga, *op. cit.*, p. 52-3.

<sup>225</sup> Minobe, "Senkyo Taii", *Kenpô oyobi Kenpôshi Kenkyû*, p. 441. The article originally appeared in the *Yomiuri Shimbun*, April and May 1907, and also in *Kokkagakkai Zasshi*, vol. 22, no. 6.



In addition Minobe held to his position with great resilience, at a time when various new practices and institutions were being introduced to reshape the whole structure of the legal and political system, and when the prevailing pessimism about the country's political and economic system intensified.

In sum Minobe's views of political representation constitute another facet of his attempt to promote a civil society, a society where rational authority is created by its members through open debate. Throughout his career he attempted to bridge the gap between politics and scholarship by always addressing himself to the institutions of the newly fledged state. By attempting the ideal of detached assessment (even as he could never achieve it) his work directly confronted the various misuses and abuses of power that he encountered in his lifetime.

## **Sakai Toshihiko: Industrialisation, Hierarchy, and the Rise of Japanese Socialist Thought**

In order to restrict discretionary power, Minobe Tatsukichi promoted the creation of rational authority through legal debate. His adherence to Jellinek's state self-control theory, his insistence on social rather than administrative law, and his idea of organs as representative bodies were all meant to further that aim. However, such proceedings are not enough to fully confront the workings of discretionary power in a society rapidly industrialised and with an unfolding political system. Now, therefore, we will examine Sakai Toshihiko's active socialist critique of that system and his complementary vision of a civil society.

Although his name is frequently linked with major events in the history of socialism and communism in pre-war Japan, Sakai's role is often described as supportive of more prominent activists such as Kôtoku Shûsui (1871–1911) and Ôsugi Sakae (1885–1923). Both Kôtoku and Ôsugi were strong advocates of anarchist thought, and their writings and personal charisma are believed to have had major influence in determining the general course of the Japanese socialist movement. Yet Sakai's unfaltering commitment at a time of harsh government oppression testifies to a highly independent mind and offers a rare example of consistency among the socialists and communists of his time, for many turned either to anarchism or embraced a nationalist and imperialistic position in the 1920s and 1930s. The nature and sources of Sakai's consistency in his attachment to socialism is therefore well worth study.

Furthermore Sakai's political commitment drew him repeatedly to the plight of the marginalised, to women, anti-imperial Chinese and Korean students, and the *burakumin*. Typically his last major involvement was the operation of a farmers' school in his hometown in Kyushu. Sakai's vision of a classless society was translated into a lifetime of political activism.

John Crump, defining socialism in contradistinction to the main features of capitalism, speaks of "a society where production is for the direct satisfaction of

human needs without the mediation of a process of buying and selling or exchange, where the means of production are commonly owned and democratically controlled, where there are neither social classes, the state, nor money". He concludes, provocatively, that "socialism—either as a body of thought or as an active political movement—has barely existed" in Japan, "at any period".<sup>1</sup>

Now if we interpret socialism and communism—for Sakai, they are interchangeable concepts—as a set of clearly laid-out ideological principles, Sakai's socialism does indeed appear eclectic and conceptually loose. And his political alignments were not at all static and dogmatically fixed but essentially fluid. Thus, despite his close partnership with Kôtoku until the latter's execution in 1911, Sakai was not able to support the former's anarchistic approach whole-heartedly. And although they were once close allies, Sakai eventually broke away from Ôsugi, when the latter's anarcho-syndicalism conflicted with Sakai's support of Bolshevism. Equally, although he was chairman of the first Japanese Communist Party when it was illegally formed in 1922, Sakai gradually distanced himself from the party, which became increasingly under the control of the Communist International (Comintern). Sakai then became involved in the proletarian movement until his death in 1933.

Nevertheless the shapes of society and government that Sakai strove to achieve using the concept of socialism are a record of continuous intellectual probing and engagement. Products of Sakai's dialogue with self, as well as society, they do indeed testify to "a body of thought" in as much as they derive from some of the seminal writings of international socialism, as well as from Sakai's sense of the relevance of socialist ideals to his country's needs and possible future. Japanese socialism was never an entirely coherent movement (as Crump demonstrates), but under the leadership of a man like Sakai thought was always a prelude to action, even as historical forces meant that such action was rarely successful.

Sakai came to embrace socialism relatively late in his life. At first it was little more to him than a crude utopian concept of economic equality. Yet such a simple message was attractive enough for the 30-year-old, drifting journalist, who had long searched for a coherent vision capable of linking self realisation and social justice.

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<sup>1</sup> John Crump, "Introduction", *The Origins of Socialist Thought in Japan* (London: Croom Helm,

Such heuristic questioning climaxed for him when he encountered the dialectical materialism of Marx and Engels. Through reading, writing, and debate, Sakai's materialism was sharpened and internalised, precisely because it was a way for him to interpret the world where he lived and the relationships between that world and self.

At the same time, harsh political experience constantly upheld ideology. For as with many other socialists of his time, Sakai experienced the full operation of "state power" which could deem his activities and opinions criminal and punish him accordingly. Yet it was the High Treason Incident of 1911, in which Sakai's closest collaborator and friend Kôtoku was executed, along with 11 others whom the government deemed anarchists, that developed his thought most fully. For now his criticism focussed on totalitarian power, power that could overwhelm the individual in the name of the whole, be it state, society or party. For Sakai, socialism sought both individual freedom and communal solidarity, and socialism's negotiation between individual freedom and the common good he took for granted. Once a private, hermeneutic (or critical) inquiry about the relationship between self and society, his socialism increasingly became an attempt to envisage a new public sphere in response to what he saw as the defective political, economic, and social arrangements of his time. To better perceive this interaction between thought and society, I will now provide a brief overview of the principal episodes of his life as they impinge on his socialism.

### 3.1. Biography: major aspects of Sakai's career

Sakai Toshihiko was born in 1870 as the third son of a former low-ranking samurai family in Toyotsu, Fukuoka Prefecture.<sup>2</sup> As he grew up, Sakai experienced at first-

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1983). The page is not numbered.

<sup>2</sup> See Sakai Toshihiko, "Sakai Toshihikoden [Autobiography of Sakai Toshihiko]", Kawaguchi Toshihiko (ed.), *Sakai Toshihiko Zenshû* (STZ hereafter, six volumes, Kyoto: Hôritsu Bunkasha, 1970-71), vol. 6, pp. 41-9. The autobiography was originally serialised in *Kaizô* from December 1924. It ends, however, with his joining the newspaper *Yorozuchôhō* in 1899, and thus covers only the early part of his life. A helpful complement to *Zenshû* is a biography by Kawaguchi, *Sakai Toshihiko no Shôgai*, 2 vols, Tokyo: Shakaishugi Kyôkai Shuppankyoku, 1992 and 1993. A brief and useful

hand the violent transition from the old order to the new. After the Meiji Restoration, the family no longer belonged to the samurai class. And in 1876 the government ended its previous economic support for former samurai households, introducing a system of government bonds, with payment in the form of annual interest. The bonds were so low in value that 95 percent of the relevant households could not live on the interest alone. They had to find new ways of making a living, in government or in business. Sakai records various examples of samurai families around him who had lost their entire assets. He also witnessed the last of the armed rebellions by former samurai against the government, such as the Akizuki Rebellion in 1876 in his region, and the Seinan Rebellion in 1877 in Kagoshima, southern Kyushu.

Sakai records the lingering animosity between the samurai and the merchant and peasant class, including his own prejudice against those held to be inferior, whose manners and speech were unfamiliar to him. He recalls his school days with an acute sense of transition. "Children from the declining class [samurai] and those from the emerging classes [wealthy merchants and farmers] studied in the same classroom."<sup>3</sup> Yet his education developed him socially, and introduced him to physics, biology, mathematics, drawing, music, and English. Sport too was a liberating part of the curriculum. Some readers used at the school were direct translations from English, while Chinese classics continued to be taught, which Sakai enjoyed. Texts from Japanese history, such as *Nihon Gaishi* by Rai Sanyō, also appeared. Thus although Sakai recalls that education had become more conservative than when his older brothers went to school, political debate being removed from the formal curriculum, the approved course of study still managed to be remarkably liberal and diverse.<sup>4</sup>

Sakai belongs to what Katō Shūichi calls the 1868 generation, born in the twenty years around the Meiji Restoration, from 1860 to 1880. Katō summarises the major characteristics of the generation as follows: they knew both the Chinese classics and new subjects such as English, they experienced the turmoil of the times,

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overview of Sakai is found in George M. Beckmann and Okubo Genji, *The Japanese Communist Party 1922-1945* (Stanford: Stanford University Press, 1969), pp. 8-9 and p. 380. A list of Sakai's publications is provided by Yamaizumi Susumu *et al.*, *Early Japanese Socialism Studies*, no. 10, 1997, Tokyo: Fuji Shuppan, pp. 136-61.

<sup>3</sup> Sakai Toshihiko, "Sakai Toshihikoden", STZ, vol. 6, p. 57.

<sup>4</sup> *ibid.*, p. 61.



they were influenced by the contemporaneous cultural and enlightenment movement, and they also witnessed the Jiyûminken Undô, the movement for freedom and popular rights. Thus they grew up with clear awareness of “the development of Meiji society” and the Meiji state. Intense interests in politics and ascendancy ambition were common in this generation, setting them apart from the previous and future generations: “...[T]he generation that grew up through this period was interested in the direction taken in the development of Meiji society as a whole and the historical significance of the violent social changes. These social changes took the form, firstly of what was known as ‘civilization and enlightenment’ and a trial and error ‘modernization’ on western models.”<sup>5</sup> Sakai’s desire to learn, admiration for the West as a source of new learning, intense interest in society and politics, and a sceptical view of government stayed with him throughout his life. After this generation, the status of society as “the fundamental and all-embracing subject” waned, with increasing regimentation of state structure and social life, according to Katô.<sup>6</sup>

Sakai was also a product of the new social mobility, and of what Maruyama Masao calls the new ascendancy society.<sup>7</sup> A large number of young people, many of whom were the second, third, and fourth sons, constituted this new society. They had no heavy obligations to their families as the eldest sons had, and instead they had to find their own way of making a living. They were part of the new “non-propertied class” with strong motivation for self-improvement. Sakai was himself free from family obligations, although he later had to look after his parents after the death of the family’s eldest son. For the aspiring young man, Tokyo was the centre of learning and opportunity. Sakai, wanting to become a politician and a writer, entered the prestigious First High School, and yet dropped out because of truancy. Cut off from the normal routes to prominence, the only available professions were as writer, teacher, or newspaper reporter. Thus, from 1889 to 1897, Sakai moved from one newspaper to another, writing novels occasionally. This is his “romantic” period,

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<sup>5</sup> Katô Shûichi, *A History of Japanese Literature*, new abridged edition, translated by Don Sanderson (Surrey: Curzon Press, 1997), pp. 244-5.

<sup>6</sup> Katô says: “This generation was in its turn followed by a generation born at the turn of the century which was clearly divided. Some writers, many of the central figures being Marxists, felt strong social concern; some felt none at all” (*ibid.*, p. 245).

<sup>7</sup> Maruyama, *Nihon no Shisô*, p. 26, 44-5.

when he was relatively carefree yet driven by a desire to learn and succeed. A member of various social organisations, including one for amateur writers, Sakai portrays himself at this period as a “sentimental royalist”.<sup>8</sup>

Sakai then found himself among the marginalised groups, the declining former samurai class, and the drop-outs. Also for those coming from the countryside such as Sakai, national identity was a new and problematical acquisition, for it had to replace their initial attachment to their respective “*kuni*” (regions).<sup>9</sup> Such peripheral identity, in his case a combination of strong personal ambition and an uprooted sense of inadequacy, seems to have prevented him from ever identifying himself with collective notions of “state” and “public” as dictated by government.

Thus in his study of the left-wing students in the 1920s Henry D. Smith compares the Shinjinkai (New Man Society), a student group established in 1918, with the Meiji socialists. In contrast to their predecessors, most students who became active in helping labour and tenant movements during the Taishō democratic movement were graduates of the Tokyo Imperial University or were attending the university, the very institution at the top of the educational pyramid and deeply attached to the state structure. They lacked the strong “outside spirit” and diverse personal experiences of the Meiji socialists. “It is perhaps the great paradox of this generation of left-wing intellectuals that they have tended to accept the prestige and preferment accorded them as university graduates at the same time they have vowed to overthrow the very political system which allows them such prestige.”<sup>10</sup> Thus their inheritance, and also insecurity about the future, made them more susceptible to political manipulation. Mass “*tenkō*” (recantation of one’s belief) took place among those students in the 1930s, when the government intensified coercive pressure. “Thus evolved the peculiar mode of suppression of the student left—and hence of the left as a whole—which combined the approach of the educator with that of the

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<sup>8</sup> Sakai, “Sakai Toshihiko den”, STZ, vol. 6, p. 12.

<sup>9</sup> Sakai recalls his experience of identity shifts, first when he moved to Tokyo for education. His regional identity was replaced by a “national” identity and he became a passionate “patriot” at the time of the Sino-Japanese War. But his national identity was eroded and he became more cosmopolitan, when he absorbed socialism, according to his own account. See Sakai, “Sakura to Chin to Aikokushin [Cherry Blossom, Dog, and Patriotism]”, *Kaji to Hanshō* (Tokyo: Santokusha, 1921), STZ, vol. 5, pp. 137-40. *Chin* is a homonym of the word the emperor uses when addressing himself, and thus implies the emperor.

<sup>10</sup> Henry D. Smith, *Japan’s First Student Radicals* (Cambridge, Mass.: Harvard University Press, 1972), pp. 267-8.

police. It is doubtful that the policy of *tenkô* would have been pursued as assiduously—and so successfully—if all those arrested as communists had been lower-class workers and Meiji-style renegade intellectuals.”<sup>11</sup>

Sakai’s status as outsider clearly helped him to maintain his independent position as a socialist critic of government and society. His conception of socialism was subject to change, but viewed from the post-war perspective of social democracy, his thought maintains a strong coherence. Complementing his peripheral identity and broad experience, his thought was sustained by his writing and by his study of Marxism.

Writing remained Sakai’s major political activity throughout his life. His desire to express his own feeling and thought, and his equally strong desire to connect to society, were demonstrated in his literary preference, even before he consciously became socialist. For Sakai, writing is a way in which one examines the relationship between self and the outer world. Thus in 1900 he praises Tokutomi Roka for his realistic depiction of society in *Hototogisu*: “Most so-called novelists of the day ignore historical facts and real social moods, and casually introduce such characters as a university graduate, a military officer, a government official, and a wife. They believe that they are able to portray them well. But many of them merely portray their actions and feelings related only to the plot, not to society or political realities. They are not interested in social and political concerns. Tokutomi’s work has escaped such shortcomings.”<sup>12</sup>

About a decade later, after he had immersed himself in Marxism, Sakai made a similar point when he reviewed Nagai Kafû’s *Wakuraba*. He praises the work for its criticism of passive adherence to traditional human relationships based on obligation (*giri*) and feeling (*ninjô*). At the same time, Nagai does not penetrate deep enough to unravel the social structure. “After reading this work, I thought that the nature of present-day literature had become clearer to me. Modern writers do not understand the foundation of the social structure, that is, the economic structure that is the base of politics, law, morality, and religion. They are merely worried about the contradictions of their immediate lives. They try to solve them through mental

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<sup>11</sup> *ibid.*, p. 268.

<sup>12</sup> Sakai, “Hototogisu o yomu”, STZ, vol. 1, pp. 32-3. The article originally appeared in the *Yorozuchôhō* on 6 February 1900.

activities alone, but finally give up any hope for change, then become disappointed, try to escape, or indulge themselves in distracting activities.”<sup>13</sup> Again he criticises the work for its limited social engagement: the writer’s grasp of psychology is less important to him than his overall social vision.

In this regard Katô Shûichi has already pointed out the tendency of Japanese authors of this period to detach themselves from social reality.<sup>14</sup> Thus when Sakai talks about social realism, his models are Emile Zola and the European naturalist writers, and Kafû is not counted a naturalist writer. For him, realism means a combination of detailed observation of the whole: self and society are inseparable.

Sakai was initiated into socialism when he joined the *Yorozuchôhō*, a popular daily published by the journalist and novelist Kuroiwa Ruikô, in July 1899. There he met many reformist journalists, including Kôtoku, Uchimura Kanzô, and Kawakami Kiyoshi. Under their influence, Sakai began to be politicised. In May 1901, a group of six men, Abe Isoo, Katayama Sen, Kinoshita Naoe, Kawakami, Nishioka Kôjirô, and Kôtoku, who were all Christians except Kôtoku, founded the first party to carry the name Social Democrat in Japan. The party was immediately banned. Two months later, Sakai joined the *Risôdan*, a group of the paper’s journalists eager for social reform, and called himself a socialist.

In 1903, Sakai, Kôtoku and Uchimura left the paper when its editor began to support Japan’s military confrontation with Russia. Uchimura, a Christian, opposed the anticipated war for humanitarian reasons. On the other hand, Sakai and Kôtoku opposed the war out of universal socialism. They wrote in a jointly signed article which appeared in the *Yorozuchôhō* on the day of their resignation: “If we look at

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<sup>13</sup> Sakai, “Sunba Tôjin”, *Baibunshû* (Tokyo: Heigo Shuppansha, 1912), STZ, vol. 4, p. 64.

<sup>14</sup> Katô Shûichi says about “naturalist” writers in Japan: “These writers had taken [Tsubouchi] Shôyô’s idea of ‘depicting human feelings as they are’ to mean that they should describe unaltered their own experience, and it was this that they—or at least, some of them—claimed to be naturalistic writing. The word ‘naturalism’ (*shizenshugi* in Japanese) has created a good deal of confusion in accounts of modern Japanese literature.” Zola on the other hand “attempted to demonstrate how material factors are decisive in the shaping of human thoughts and emotions. Zola’s novels have reference to the methods of biological science, a feature peculiar to naturalism; they took a broad view of society (and thus could not have a hero identical with the writer), a characteristic already evident in the work of Balzac, and were concerned with civil society, as had been many novels since the eighteenth century. None of these features are to be found in the work of the Japanese naturalists. They have no connection with scientific methods—indeed in the Japan of the time there was no general interest in science; the world of the novels is extremely small, the range of incident limited to the immediate vicinity of the hero/author; and the subject is not the internal contradictions of civil society but the disputes arising from its immaturity” (Katô, *op. cit.*, pp. 270-1).



international wars from the socialist point of view, they are carried out by private cliques, such as the aristocracy and the military, and a majority of the people are made victims.”<sup>15</sup> Within a month, Sakai and Kôtoku had founded the *Heimin Shimbun* (Common People’s Newspaper), “the most representative organ of the socialist movement in Japan at that time”.<sup>16</sup> The paper was disbanded in 1907 because of the government’s harassment, financial difficulties, and the growing tension between Christians and “Marxists”.<sup>17</sup> Yet Sakai recalls the two years that he worked for the paper as the “most fruitful and intense period” of his life.<sup>18</sup>

It is during this period that Sakai came to understand Marxism through translating the *Communist Manifesto* in 1904, and *Socialism: Utopian and Scientific* in 1906, and by reading widely, mostly in English. According to Germaine Hoston, the two translations are “the two most sophisticated presentations of Marxism available in Japanese on the eve of the Russo-Japanese War”.<sup>19</sup> The *Shakaishugi Kôryô* by Sakai and Morichika Umpei published in 1907 is also regarded as “a third pioneering work”.<sup>20</sup> The *Shakaishugi Kenkyû* [*Study of Socialism*], which Sakai published monthly for five months in 1906, laid the groundwork for the dissemination of Marxism in Japan.<sup>21</sup> At the same time, Sakai translated a diverse range of European literature, including Zola’s *Fécondité* [*Fruitfulness*] and *Travail* [*Work*], and William Morris’s *News from Nowhere*.

Sakai’s partnership with Kôtoku remained strong until the latter’s execution in 1911. However, their different attitudes to tactics began to emerge in 1906, after Kôtoku returned from the United States, where he had spent about seven months contacting American anarchists and organising a protest movement among Japanese

<sup>15</sup> Sakai and Kôtoku, “Taisha no Ji”, the *Yorozuchôhō*, 12 October 1903, STZ, vol. 1, p. 289.

<sup>16</sup> Crump, *op. cit.*, p. 59. Sakai also recalls the popularity of the *Heimin Shimbun*. The first 5,000 copies were soon increased to 8,000, a significant number for a daily of the time. Various reading groups were established in many parts of the country, and the members of the paper were invited to talk. See Sakai, “Heiminshajidai”, in “Shakaishugi Undôshiwa [A Sketch of Past Socialist Movements]”, *Chûô Kôron*, January 1931, STZ, vol. 6, pp. 189, 195.

<sup>17</sup> Sakai, “Nihon Shakaishugi Undôshôshi [A Brief History of Japanese Socialist Movements]”, leaflets published along with *Marukusu Engerusu Zenshû* [*Collected Works of Marx and Engels*] (Tokyo: Kaizôsha, from June 1928), STZ, vol. 6, p. 328.

<sup>18</sup> Sakai, “Shakaishugi Undôshiwa”, STZ, vol. 6, p. 168.

<sup>19</sup> Germaine A. Hoston, *Marxism and the Crisis of Development in Prewar Japan* (Princeton, N.J.: Princeton University Press, 1986), p. 43.

<sup>20</sup> *ibid.*, p. 305.

<sup>21</sup> See Kawaguchi, *Sakai Toshihiko no Shôgai*, vol. 1, pp. 207-14.



students.<sup>22</sup> Kôtoku's position was now more extreme than previously, although his anarchism entailed general strikes not the violent overthrow of the government.<sup>23</sup>

Also in 1906, Sakai, Kôtoku and others founded the Japanese Socialist Party, when they sensed that the new government led by Prime Minister Saionji Kinmochi was more tolerant towards political activities than had previously been the case. The party was legal, as its platform pledged that it would conduct its activities "within the law of the state". Yet within six months it was embroiled in acrimonious internal debate about its strategy towards Parliament.

In the early days most of the socialists were parliamentarians, following the footsteps of the German Social Democratic Party. Yet their attitudes were mixed, since the election system was then discriminatory. How meaningful was it to support a system when it allowed only wealthy people to participate? The question took a more concrete form in their debate, when they sensed a shift in the global revolutionary trend from German social democracy to the anarchism envisaged by such theorists as Kropotkin and by anarcho-syndicalism in France.

Thus in 1906 Kôtoku proposed direct action from workers rather than a campaign for full parliamentary participation. The party was divided. Although it adopted Kôtoku's strategy in a 22-1 vote at its executive committee in 1907, many of its leaders, including Sakai, were ambivalent and tried to find a compromise. The final platform rejected Kôtoku's call for direct action, but also said that its members could engage in a universal suffrage movement voluntarily.

Sakai's divided attitudes to Parliament and to anarchism reveal his life-long negotiation between personal freedom and social engagement. For him, personal freedom is the ultimate purpose in life, and yet freedom cannot be separated from the fact that we are "social beings". To conduct the common life effectively, people need peaceful means to express "social determination" (*shakai no kesshin*) and "national consensus" (*kokuminteki shiji*).<sup>24</sup> The country's representative system is defective and has to be altered, and yet Parliament ought to be the ultimate organ of

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<sup>22</sup> See Crump, "Kotoku Shusui and the American Connection", *op. cit.*, pp. 182-211.

<sup>23</sup> Sakai, "Nihon Shakaishugi Undô ni okeru Museifushugi no Yakuwari [The Role of Anarchism in Japanese Socialist Movements]", serialised in *Rônô* from July 1928 (vol. 2, no. 7) to January 1929 (vol. 3, no. 1), STZ, vol. 6, pp. 286-7.

<sup>24</sup> Sakai, "Futsûsenkyo to Rôdôkumiai [Universal Suffrage and Labour Movements]", *Yuibutsushikan no Tachibakara* (Tokyo: Mitashobô, 1919), STZ, vol. 4, p. 496. The article was originally written in 1918.

representing the people, and the country has already in existence the necessary institutions. Thus in 1918, Sakai asserts that universal suffrage and the trade unions are two props of the common good backed by freedom of speech and association. His hope is to create a new political power within society, a new decision-making mechanism, in which common opinions are formed through association and rational debate, and implemented by an elective executive.

For Sakai compromise between personal freedom and the common life can be made only through autonomous negotiations within society. This conviction remained crucial for him, and is reflected in his attitudes towards Parliament. Sakai appears to have never lost his attachment to Parliament, even when he was regarded as a member of the "anarchist" camp led by Kôtoku in 1906 and 1907, and when he sided with the Bolshevik strategy during a brief period in the early 1920s. Likewise Sakai never became an anarchist, although he remained sympathetic, because he recognised that the anarchists' fierce hostility towards state power was one way to preserve critical autonomy within the system.

The fact that a choice between direct action and parliamentarianism became the most contentious issue for the socialists in 1906 also reveals the peculiar problems of the Japanese political system which Sakai and other socialists had to face. For in a truly participatory democracy there need be no necessary contradiction between direct action and broad political participation through Parliament under a system of popular sovereignty. In fact, Sakai learned through experience and with the introduction of male universal suffrage in 1925 that direct action and parliamentarianism could complement each other in the formation of public opinion. Yet the 1906 debate by the Social Democratic Party not only concerns the political system as a whole but also reflects a pervasive scepticism about political participation, focusing on the role of Parliament. The idea of Parliament as the ultimate organ for political representation remained, although it sometimes raised unreasonably high expectations for the constitutionally weak and practically ineffective national assembly. On the other hand, in the absence of full public participation, Parliament could never become an integral part of public consciousness. Thus, the Japanese leadership was unable to launch a national unity party, akin to Hitler's National Socialist Party or Mussolini's Fascist Party, when the

country intensified its war efforts in the late 1930s, because Parliament did not have the requisite authority and influence over the people. Sakai's both cautious and optimistic assessments of parliamentary politics are a record of Parliament's mixed appeal.

At the same time the fluctuating fortunes of the Japanese Socialist Party in its early years serve as an index of governmental security. Tolerance and repression complement the general atmosphere of society, and the party operated largely unhindered in the more liberal years immediately after the Russo-Japanese War.<sup>25</sup> However in 1907, when the party dropped its previous adherence to "within the limits of the law", the government promptly banned it.

When Katsura replaced Saionji as prime minister in 1908, the government intensified its suppression of socialist activities. Sakai was sentenced to two years in prison for obstructing the police in the Red Flag Incident in June, and two months for violating the Press Law, after having already spent one and half months in prison earlier in the year. The government's tighter measures coincided with the growing pressure of financial and domestic crises. Thus the Russo-Japanese War had left the government with deep financial shortfalls. At the same time the public had become more impatient with what they saw as governmental exploitation, as seen in the Hibiya Riots of 1905. Yet international co-operation, a euphemism for continued military spending, had to be maintained. New taxes were levied on such basic commodities as alcohol, sugar, and kerosene in 1908, triggering wide-spread protests. Hence the years 1907 and 1908 saw a sharp increase in the number of labour disputes. Typically the government issued the *Boshin Shôsho*, in the form of a message from the emperor urging the people to save and be frugal, a transparent attempt to alleviate post-war problems by creating a public-spirited populace firmly linked to the state, to local government, and to the family. The issuance of the imperial message coincided with the launching of the Local Improvement Movement, a programme initiated by the Home Affairs Ministry to "improve" the regions. Accordingly the ministry instructed the text to be read at various public

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<sup>25</sup> Yamakawa Kikue recalls this period as representing "the peak of liberalism and naturalism, and growing calls for forward change, disclosure of truth, and no icon worship" quoted by Kawaguchi, *Sakai Toshihiko no Shôgai*, vol. 2, p. 99.

meetings through prefectural governors and regional leaders.<sup>26</sup> The movement was intended to reorganise the state structure by co-opting the people to local communities, and aligning local communities with the central government. Thus, if the *Boshin Shôsho* asserts that “further expansion is necessary in various areas of government”, it also requires an “efficient” local government structure. Within this rhetoric of public service the bureaucrats are clearly present.<sup>27</sup> And in a directly related way the increasing harassment of socialists also reflects the beleaguered government’s efforts to reinforce its authority.

That harassment reached its climax in 1911, when the government executed the 12 “anarchists”, including Kôtoku, for attempting to assassinate Emperor Meiji. The incident, which became known as Taigyaku Jiken (High Treason Incident), marked the beginning of the “winter” period, during which time socialists were banned from all political activities. Sakai continued to make a living through his writing. This was also a period of intensive reading, and Sakai’s political understanding deepened significantly as I hope to show later. The loss of close friends and the demonstration of state power seemed to mark him permanently. Afterwards his logic sharpened, and his writing became more pointed and unsentimental. His previous carefree attitude was now replaced by a persistent preoccupation with simplicity of statement, as if clarity was a form of self-defence and self-assertion. Persistent censorship forced him to be cautious, yet his inquiry into authority became much deeper than before. Sakai’s reading and writing during the winter period were diverse and intensive, and his commitment to Marxism (and his knowledge of it) increased.

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<sup>26</sup> Kinbara Samon, “Ie to Mura to Kokka no Aideorôji [Ideologies of the Family, the Village and the State]”, in Rekishigaku Kenkyûkai and Nihonshi Kenkyûkai (eds.), *Kôza Nihon Rekishi 8, Kindai 2* (Tokyo: Tokyo Daigaku Shuppankai, 1985), p. 283. The administrative programme included the classification of the assets of traditional communities, such as common forests, as the properties of municipal governments, and the abolition of community shrines (the one-shrine-per-village or town policy). The consolidation of shrines (*jinja gôshi*) around 1906 is part of the Local Improvement Movement, but the degree of consolidation varied because of opposition from local residents (see pp. 301-4). The first measure was intended to improve local government finances, and the second to create the “spiritual unity” of the municipality.

<sup>27</sup> Kenneth Pyle describes the Local Improvement Movement as “the first organised and sustained effort of the Japanese government to deal with social problems created by industrialism and imperialism”. The movement was not uniformly successful, but it reorganised local groups into “a national hierarchy”, “under bureaucratic guidance”, and it instilled “nationalism” in local leaders. See Kenneth Pyle, “The Technology of Japanese Nationalism: The Local Improvement Movement, 1900-1918”, *Journal of Asian Studies*, vol. 33, no. 1, 1973, pp. 51-65.



The outbreak of World War I in 1914, however, reinforced the spread of socialism, nationally and internationally. In September 1915, Sakai began to publish the monthly magazine *Shinshakai* [*New Society*], “the first organ to be published for socialist activities after a long break”.<sup>28</sup> The aim as before was to disseminate Marxism. In 1916, Takabatake Motoyuki (1886–1928) and Yamakawa Hitoshi (1880–1958) joined Sakai to run Baibunsha, a miscellaneous publishing house he had set up after his release from prison in 1910. Socialist supporters began to gather around Sakai, and in 1917 he ran for the general election in a Tokyo constituency, although he received only 25 votes. But in March he sent a congratulatory message to the Russian leaders, representing Japanese socialists, and in October, he introduced Lenin’s writings to the general public when he published a translation of Lenin’s *Russian Revolution*.

The Russian Revolution and growing democratic movements abroad also encouraged Japanese domestic movements. In 1917, the number of labour disputes more than tripled compared with a year earlier. In the summer of 1918, housewives in a small fishing village in Toyama Prefecture initiated a riot protesting against the high price of rice: the riots spread across the country in a month, and involved nearly 1 million protesters. The government of Prime Minister Terauchi Masataka deployed the Army to quell the riots; his action met strong public criticism, and Terauchi was forced to resign and was replaced by Hara Takashi. Hara was the first prime minister to be chosen based on his party’s parliamentary strength, marking the beginning of party politics in the country. In the same year Sakai was able to abandon his practice of publishing anonymously.

Sakai described the year 1919 as a time of great confusion in Japanese society in terms of political thought and activities. Marxism had begun to attract intense interest among intellectuals, and in late 1918, intellectuals and students guided by Yoshino Sakuzô formed their own societies Reimeikai (Dawn Society) and Shinjinkai (New Man Society) to promote political reform. Universal suffrage and labour and tenant movements began to have momentum. Nationalist movements also began to emerge. By contrast, Kita Ikki, “the ideological father of Japanese fascism”, launched at the same time Yûzonsha [the Society of Those who Yet Remain]. Its

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<sup>28</sup> Sakai, “Nihon Shakaishugi Undô ni okeru Museifushugi no Yakuwari”, STZ, vol. 6, p. 308.



platform included “the construction of a revolutionised Japan”, “the co-ordination of reform movements”, and “the emancipation of the Asian peoples”. As Maruyama Masao remarks, “it was not simply an anti-Bolshevist movement like the previous groups, but displayed a truly fascist ideology that combined domestic reforms and international demands”. Maruyama sees the year 1919 as the start of “a clear growth in right-wing activity”.<sup>29</sup>

This new atmosphere also influenced the socialists around Sakai. Takabatake, the first Japanese to translate Marx’s *Capital*, began to advocate state socialism (*kokka shakaishugi*) centring on the imperial family, while Sakai insisted on Marxism. Drifting apart, they dissolved Baibunsha.

Nevertheless the major impact of the Russian Revolution and of growing domestic democratic movements on Sakai is perhaps best to be seen in his increasing recognition of the masses as real political agents. The establishment of the Soviet Union reinforced this process, which in turn fostered the formation of a political party. For until then Sakai had shared the alienation from the masses of the early socialists.

Crump points to the elitism of the Meiji socialists, and in Sakai’s case says it stemmed from his samurai background and “Confucian training”. Crump quotes Sakai as saying in 1902, “Right-minded young gentlemen must sternly control their desire for food, clothing and shelter and admonish all thoughts of idleness and luxury. But one certainly should not hope to see such attitudes emerge among the majority of ordinary people, on a scale wider than among what I call ‘right-minded’ people.”<sup>30</sup>

Another reason for the Meiji socialists’ detachment from the masses was Japan’s low level of capitalist development and the small number of factory workers, according to Crump. Yet it remains true that Sakai’s socialism was not prompted by proletarian class consciousness, and in his early career socialism was to be practised for self improvement rather than as an instrument of orchestrated social change. With

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<sup>29</sup> Maruyama Masao, “The Ideology and Dynamics of Japanese Fascism”, *Thought and Behaviour in Modern Japanese Politics*, p. 28.

<sup>30</sup> Crump, *op. cit.*, p.130. Sakai’s article appeared in the *Yorozuchôhō* on 24 December 1902, STZ, vol. 1, pp. 240-41. According to Crump, “In the true elitist Confucian style, society was to be reformed *for* the ‘ordinary people’. Until this had been done *for* ‘them,’ ‘they’ could hardly be considered responsible for their actions—let alone for their own emancipation” (Crump, *op. cit.*, p. 131).

socialism intensely linked for him to personal venality, some key concepts of mass movements, such as association based on individual spontaneity and spontaneous practical leadership, were absent.<sup>31</sup> However the concept of the masses is already inherent in his view of the ideal, and Sakai's shift from socialism as personal moral belief to socialism as a guiding principle for mass movements was less problematic than for some of his contemporaries.

The new tendencies were especially apparent in 1922, when Yamakawa published a now famous essay entitled "Musankaikyû Undô no Hôkôtenkan [Change of Direction of Proletariat Movements]" in the *Zenei*. Inspired by the establishment of the Soviet Union, Yamakawa asserts that Japanese socialists hitherto had been engaged in activities detached from the masses, and they should now align themselves with the people and move them in a new direction. This message was in tune with Sakai's own reappraisal, and in an essay of 1928 he would say, "The past 20 years of the socialist movement have been largely a matter of private quests for clarification of individual positions, away from the masses. But such an unpolluted (*keppeki*) attitude has its limits."<sup>32</sup> Now, "a small circle of friends" chattering about imaginary revolution or venting their frustrations about police harassment would never change the world. Fifty-two years old, Sakai now readily admitted previous shortcomings: he and his friends had failed to connect with ordinary people.

Thus his recognition of the need for a new direction motivated him to join other socialists and communists to form the Shakaishugi Dômei (Socialist League) in 1920. Here socialists and labour activists joined forces for the first time. As Sakai puts it, the organisation was "an attempt to transform the growing labour movement into a political entity", and "the first effort of the emerging proletariat to consolidate itself as a political force".<sup>33</sup> The organisation was banned in the following year. At the same time, a serious rift between "Bolshevism" and anarcho-syndicalism became clear.

In 1922, Sakai and others founded the Japan Communist Party illegally and he became the first chairman. He was imprisoned in 1923 for seven months in the

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<sup>31</sup> For a general criticism of such a tendency, see Matsuzawa Hiroaki, *Nihon Shakaishugi no Shisô* (Tokyo: Chikuma Shobô, 1973), pp. 39-41.

<sup>32</sup> Sakai, "Nihon Shakaishugi Undôshôshi", STZ, vol. 6, p. 354-5.

<sup>33</sup> *ibid.*, p. 355.

first large-scale crackdown on communists, and he did not join the party when it was reestablished in 1926. Instead, he joined the Rônô-ha, a group of socialists critical of the Comintern, and he inclined towards various proletariat movements. Sakai's withdrawal was regarded as a betrayal by die-hard supporters of the party.<sup>34</sup> Yet it also reflects his lifelong search for a practical, peaceful and spontaneous transition to socialism.

Thus Sakai helped organise the Nihon Taishûtô (Japan Mass Party), a coalition of seven proletarian parties in 1928, and as its candidate won a seat in the Tokyo Metropolitan assembly in 1929. The party was short-lived, as with many other small non-affiliated organisations. Personal animosities are often cited as the major reason for the repeated splits, but behind such confrontation lie fundamental differences of opinion about the role of a political party in the operation of the state. Furthermore for a political party to function effectively, it requires a group of genuine supporters, or a political class with shared interests and political views. Japan's modernisation and the way in which industry was built did not encourage the spontaneous growth of such groups.

A representative example is the Nihon Rôdô Sôdômei (Japan General Federation of Labour) established in 1921, a national organisation deriving from Yûaikai, a friendly society of workers established in 1912. In 1919, Yûaikai became a full-fledged labour organisation whose platform included full respect for workers' rights, freedom of trade unions, and an eight-hour workday. In 1921, however, its Tokyo branch collapsed shortly before the launch of the Sôdômei. The movement had attracted large numbers of people with diverse backgrounds, including socialists, anarchists, communists and democrats, and it constantly faced difficulties in maintaining its unity. The gradualists' attempts to co-operate with employers to ensure better working conditions met with strong resistance from more radical members. In the Tokyo area, those working for big metal factories were more inclined to support collective strategies, while those working at smaller and miscellaneous factories found it difficult to find common ground.<sup>35</sup> Workers'

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<sup>34</sup> Kawaguchi, *Sakai Toshihiko no Shôgai*, vol. 2, pp. 241-2.

<sup>35</sup> Tanahashi Kotori, leader of the Tokyo branch, quoted by Hanaka Minoru, "Nihon Rôdô Gakkô o meguru Jakkan no Mondai [A Few Questions over the Japan Labour School]", *Bulletin of the Faculty of Letters*, Hôsei University, no. 28, 1982, pp. 75-6.

mistrust of the university-educated leaders was also strong. Beset with such tensions the Sôdômei split in 1925 after confrontation between its moderate and radical factions.

Despite such difficulties, Sakai sided with non-affiliated groups seeking improvement of their lives. In 1931, he helped organise the Zenkoku Rônô Taishûtô (National Labour-Farmer Masses Party). He criticised the Manchurian Incident as imperialistic aggression, and became chairman of the party's anti-war campaign committee. And he resolutely resumed his parliamentary position, because he believed in ordinary people's ability to decide their own affairs through debate at national and local assemblies.<sup>36</sup>

Sakai's career, from "sentimental" royalist to idealist reformist, from Marxist socialist to a leader of the non-affiliated proletariat, reflects the shifting progress of his own political thought. At the same time it is a record of the metamorphosis of Japanese society. For Sakai witnessed the emergence of an industrial society and the social changes that accompanied that transformation: as with many of his supporters radical social change was itself the catalyst of his alternative vision. Crucially, however, Sakai's career also mirrors the process by which the Japanese "state" became increasingly capable of confronting its own citizens. Sakai was imprisoned for the first time in 1904 for violating the press regulations. His imprisonment attracted much public attention as the first such punishment of socialists.<sup>37</sup> Sakai was sent to the Sugamo Prison, built on Western models and which housed more than 2,000 prisoners.<sup>38</sup> As yet however the state was without a powerful apparatus for suppressing the socialists, and it was less nervous about dissenting opinion: Sakai was free to read at will while in prison.

This tolerant atmosphere changed in 1907. The year began with a big fall on the Tokyo Stock Exchange, the beginning of a recession after the war. Strikes and labour disputes were recurrent. A military force was deployed to quell a riot at the Ashio Copper Mine in Tochigi Prefecture in February, a labour dispute at the Satsunai Coal Mine in Hokkaido in April and again a riot at the Besshi Copper Mine

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<sup>36</sup> For his renewed confidence in elective representation, see "Shikai o Kaikyûtôsô no Shinsenjô tarashimeyo", *Rônô*, February 1929, STZ, vol. 6, pp. 501-7.

<sup>37</sup> Sakai, "Shakaishugi Undôshiwa", STZ, vol. 6, p. 198.

<sup>38</sup> Sakai, "Gokuchû Seikatsu [A Prison Diary]", serialised in the weekly *Heimin Shimbun* from 3 July (no. 34) to 14 August (no. 40) in 1904, STZ, vol. 3, pp. 46-63.

in Shikoku in June. The government was caught between its expansion policy and domestic protests. Shortly before the government issued the *Boshin Shôsho* in October 1908, Sakai was imprisoned for one and a half months for ignoring a police order not to speak in public, in violation of the Peace Police Law. In June, he was arrested, along with Ôsugi Sakae and 11 other socialists, for causing a minor disturbance in the Red Flag Incident. Sakai was sentenced to two years for resisting the police, and another two months for violation of the press regulations. Sakai recorded that around this time police detectives began to shadow socialists in their everyday activities. And after the High Treason Incident, Tokkô were established in another attempt at surveillance.

Although it was a minor case—a scuffle between the socialists who were waving a red flag and police officers who tried to stop them, with Sakai not even among the flag wavers—the Red Flag Incident signalled the increasing powers of incrimination of authority. Thus, a year earlier, the criminal code had been revised so that judges could have broader discretion in determining sentences. Already a group of legal experts warned that with so much flexibility punishment would become much heavier under the new code. Although the suspension of sentences was introduced, the new code changed the fundamental definition of crime.<sup>39</sup> Under the old code, punishment was determined based on how much damage the crime inflicted on society. Now the new code would attribute a crime to the personal defects of the individual rather than to the attendant circumstances and social conditions, or to how much damage the act had caused. Many legal experts found the change persuasive. However, when such a flexible philosophy of crime is combined with insubstantial measures to protect the suspect, law can become so “flexible” that it can be used not only to punish law-breakers but also to define law-breakers at the volition of those who invoke it.<sup>40</sup>

A relevant example is seen in Sakai’s arrest in 1923 in the first large-scale crackdown on communists. Along with more than 20 others, Sakai was imprisoned for seven months as a pre-trial suspect. The code of criminal procedure allowed pre-

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<sup>39</sup> For an examination of the changes of the criminal code in pre-war Japan, see Saeki Chihiro and Kobayashi Yoshinobu, “Keihôgakushi [A Historical Study of the Criminal Code]”, KNKH, vol. 11, 1967, pp. 207-89.

<sup>40</sup> For contemporary criticism of the criminal code made by such lawyers as Ôba Shigema, see *ibid.*, pp. 259-62, and also Matsuo, *Taishô Demokurashî*, p. 129.



trial judges to detain the suspect for questioning without evidence. This pre-trial questioning system (*yoshin seido*) was first introduced in the Chizaihô of 1882, the first modern regulations for criminal procedure, and passed into the code of criminal procedure of 1890. Sakai was imprisoned for another six months in 1926 after the court finally ruled on his case. This pattern of flexible incrimination had already been observable in the Japanese legal system in such practices as “summary prosecution” (*ikeizai sokketsu*).<sup>41</sup> However, the tendency increased as authority felt the difficulty of containing social protests. Thus in 1924 the code of criminal procedure was revised to reinforce prosecution powers, and the Peace Preservation Law of 1925 was revised again in 1941 to allow the police further power of preventive detention (*yobô kôkin*).

This increasing flexibility in authority’s ability to incriminate was accompanied by harsher treatment of prisoners. When Sakai was imprisoned in 1926, in contrast to what had happened to him earlier, his reading and letters were censored. Thus state power was taking a more concrete shape in the form of legal empowerment and oppression, at precisely the time when a new civil force became a possibility with the extension of the male franchise. This confrontation, between state power and the forces of civil society, was most clearly demonstrated in the simultaneous enactment of the franchise and the Peace Preservation Law, a law that made “denying the private property system” a punishable offence. And the state’s harsher treatment of political prisoners echoes further this polarisation of Japanese society. Thus Sakai’s career demonstrates the intensifying confrontation between authority and the individual. And as resistance grew, authority assumed ever increasing powers to incriminate individuals arbitrarily.

Nevertheless Sakai’s socialism is always creative, not dogmatic. Ideology provided him with the tools of social analysis, but he was never a formalist, tending rather to appropriate Marxist notions in the service of his own moral intuitions. Like the two other subjects of this study he was a child of the Meiji Enlightenment, and like them, his strong sense of the historical moment moved him to action. At the

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<sup>41</sup> The former criminal code (1880–1908) lists a range of conduct to be regarded as the “minor” crime of violating policing regulations. In 1885, the Dajôkan issued the edict called *ikeizai sokketsurei* allowing heads of police stations to administer summary punishment for these cases, thereby circumventing the courts. The regulation was kept until the new judicial law (*Saibansho Hô*) was introduced in 1947.

same time, Sakai's romantic idealism always prompted him to ask fundamental questions about the nature of a future society. In this he is again representative, for all three men were intensely social in outlook, thus political. In Sakai's case however Marxism provided him not only with a vision of society but also with a methodology for its critical assessment.

Sakai's career and his critique of government is a useful gauge of the transformation of the Japanese state and society. For Sakai, socialism is inseparable from economic equality; economic equality is the central theme of almost all the articles he wrote explaining socialism to the general public. His work in this area nonetheless provides penetrating criticism of the whole structure of government and the economic system. Thus in the first section that follows, I will examine how Sakai came to understand Marxism with close attention to the origins of socialism in Japan. In the second section, I will focus on Sakai's gradual rejection of the Communist Party, and his move towards non-affiliated proletarian movements. In the third section, I will discuss Japan's industrialisation and the various forms of "alienation" that followed, which, along with government harassment, hampered the movement towards solidarity. And in the last section of the chapter, I will relate Sakai's reformist views to the condition of women and of those in the farming community: in each case previously disadvantaged sectors of society were further victimised by government policy and the drive to modernisation. In all of these areas Sakai applies his Marxist inheritance to changing Japanese circumstances.

### **3.2. Sakai's socialism: from Jiyûminken Undô to Marxism**

Robert C. Tucker summarises the key features of the thought of Marx and Engels which are often referred to as early Marxism: "a spirit of radical negation of social reality", "the idea of Kritik" (criticism or critique), "positive humanism", "unity of theory and practice", and a materialistic conception of history.<sup>42</sup> All these features are prominent in Sakai's socialism, although he responded to materialism more as a

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<sup>42</sup> Robert C. Tucker, "Introduction", in Tucker (ed.), *The Marx-Engels Reader*.

dialectical method than as a theory of history. The critical and humanistic emphases in Sakai's socialism, rather than economic analysis, are partly due to the social and economic conditions of his time and background. For where Marx and Engels emphasised the intrinsically dehumanising nature of wage labour prevalent in industrial Western Europe, in Japan this was not yet felt widely as a major cause of fundamental social change, although various problems associated with a capitalist economy, such as working conditions, industrial pollution, and urban poverty had just begun to attract public attention by the turn of the century. Sakai's samurai background may also have deterred him from serious analysis of the economy, for the orthodox neo-Confucian creed, which became the principal ideology of the ruling class of Tokugawa feudalism, had belittled the accumulation of wealth by individuals.<sup>43</sup>

However, dialectical materialism and "positive" humanism, absorbed by Sakai through reading key essays by Marx and Engels (notably *The Communist Manifesto* and *Socialism: Utopian and Scientific*) constitute the core of his socialism and sustained him as a critic of society and government. This section will therefore examine Sakai's socialist thought by focusing on his Marxist inheritance.

On 28 June 1912, about 40 people gathered at a Tokyo restaurant to celebrate the 200th birthday of Jean-Jacques Rousseau. The participants included socialists such as Sakai who were prohibited from engaging in "political" activities in the wake of the High Treason Incident, and also the old guard of the Jiyûminken Undô. Miyake Setsurei, who had criticised the government for its relentless Westernisation and advocated indigenous patriotism and national values, was the chief organiser. Sakai likened the connection between the Jiyûminken Undô and the rise of socialism in Japan to the ideological and historical link between the early French social philosophers, such as Rousseau, and the modern social reformers, such as Saint-Simon, Fourier and Owen (as Engels had explained it in his *Socialism: Utopian and Scientific*). Further, Rousseau's *Social Contract* had been translated into Japanese by Nakae Chômin in 1882 and became a best seller, thereby inspiring those involved in the Jiyûminken Undô. Thus the five-article manifesto of the *Heimin Shimbun*, which

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<sup>43</sup> See Chô Yukio, "Tokugawa Hôkenseika no Keizai Shisô", in Sugihara Shirô and Chô Yukio (eds.), *Nihon Keizai Shisôshi Dokuhon* (Tokyo: Tokyo Keizai Shinpôsha, 1979), pp. 3-7.

was first published in 1903, begins with its adherence to “freedom, equality, and fraternity”.<sup>44</sup> And the paper’s fifth issue includes an article commemorating the third anniversary of Chômin’s death and written by Kôtoku, who was one of the former’s protégés. Accordingly Sakai asserts that the Japanese socialist movement sprang from the left-wing camp of the Jiyûminken Undô.<sup>45</sup>

As with the case of Chômin, “the most influential leader of the Jiyûminken Undô”, Confucianism undoubtedly contributed to Sakai’s “positive” humanism. “Chômin’s was an extremely idealistic view of mankind”, according to Matsumoto Sannosuke, referring to the influence of Mencius on him. “It held, in essence, that mankind, having received its nature from heaven, possessed something (at least latently or potentially) equivalent to an inherent capacity to establish norms for itself and to construct order by itself so as to achieve satisfaction in life.”<sup>46</sup> According to Chômin, “it was necessary for men to discover the ‘truth’ (*shin’ri*) and to advance the cause of ‘humanity’, for these would never be realised merely through individual [sic], ‘complacent self-cultivation’ (*dokuzen jiyô*). Rather it was only through the ‘intercourse’ (*kôsai*) of many persons serving as the bearers ‘respectively of all thought’ that truth and ‘humanity’ might best be fulfilled”.<sup>47</sup> Sakai often borrows Confucian terms to explain his vision, and his closeness to Kôtoku is partly explained by the fact that they were both steeped in Confucian precepts, even as the dominating force in their early socialist circle was Christian.

However, as Crump suggests, their joint Confucian background was less significant than their exposure to various other ideas disseminated by the *Jiyûminken* activists, such as the concept of inalienable rights. Thus “Sakai was said in 1903 still to be ‘someone who regularly loves to read the Analects of Confucius and Mencius...’” And “to the extent they were saying that an important area of their thought remained rooted in Confucianism, these assertions of Kôtoku’s and Sakai’s were perfectly correct”. Yet “their claims that they had followed a Confucian path to ‘socialism’... need to be treated with a considerable amount of scepticism”.<sup>48</sup> In

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<sup>44</sup> Sakai, “Shakaishugi Undôshiwa”, STZ, vol. 6, pp. 183-4.

<sup>45</sup> *ibid.*, p. 190.

<sup>46</sup> Matsumoto Sannosuke, “Nakae Chômin and Confucianism”, in Peter Nosco (ed.), *Confucianism and Tokugawa Culture*, p. 258.

<sup>47</sup> *ibid.*, p.260. Relevant here also is Itô Jinsai, who says “nature, originally, does not move and is set into motion by material force” (*ibid.*, p. 263).

<sup>48</sup> John Crump, *op. cit.*, p. 124.

Sakai's case, however, we can at least say that Confucianism was by no means an obstacle, but served as an exemplary link to socialism.

The ideas underpinning socialism and communism were introduced into Japan as part of the whole-sale importation of Western ideas in the early Meiji period. At first the relevant ideas had no practical impact, as only a small number of intellectuals knew about them. Yet the insatiable interest in the development of Western society, particularly its problems, meant that socialism and communism could not go unnoticed. Thus, according to Shibahara Takuji, one of the earliest records in Japanese in which the words communist and socialist appear is Katô Hiroyuki's *Shinsei Taii*. This book, published in 1870, aimed at introducing the French concept of inalienable rights. Yet for the promoters of *bunmei kaika* (civilisation and enlightenment), including Katô and Nishi Amane, socialism and communism constituted a "harmful economic theory" for they advocated "the control of agriculture, industry and commerce by the state at the expense of civil rights".<sup>49</sup> Katô himself was to recant his previous exclusive endorsement of inalienable rights in the early 1880s when the Jiyûminken Undô was gaining momentum. But for some *jiyûminken* activists, socialism and communism as they understood them were always an attractive alternative to what they saw as an oppressive government indifferent to the plight of the people. Thus in May 1882, a political party calling itself Toyô Shakaitô (Oriental Socialist Party) was established in Nagasaki Prefecture by Tarui Tôkichi (1850–1922). And the *Chôya Shimibun* newspaper, critical of the government and sympathetic to the Jiyûminken Undô, carried "the first comprehensive introduction of communism and socialism"<sup>50</sup> in a series of 11 articles entitled "Ôshû Shakaitô o ronzu [About European Socialist Parties]" between June and August.<sup>51</sup> These articles mention Marx's historical materialism, the exploitation of the proletariat by capital, and workers' movements such as the First International. Yet general understanding of socialism and communism was thin, and even many

<sup>49</sup> Shibahara Takuji, "Minkenha no Shakaitô Kyomutôron [Popular Activists' Views towards Socialist and Nihilist Parties]", *Keizai Kagaku*, Department of Economics, Nagoya University, vol. 34, no. 4, March 1987, p. 152.

<sup>50</sup> *ibid.*, pp. 159–65.

<sup>51</sup> Sakai was then around 12 years old and does not mention the articles in his biography. However he does say that he was then regularly receiving the *Chôya Shimibun* from one of his brothers in Tokyo, and that the paper drew him to the Jiyûminken Undô. See "Sakai Toshihikoden", *STZ*, vol. 6., p. 60.



*jiyûminken* activists regarded socialism (which they vaguely understood as the common sharing of wealth) as “unrealistic” and “heretical”.

A deeper understanding of socialism and its potential for society occurred at the turn of the century when Japan’s industrialisation and urbanisation began to cause social distress. In 1896, Shakaiseisaku Gakkai (Association for the Study of Social Policy) with a strong reformist position was established by Kuwata Kumazô and Kanai Noboru, who were students of German historicism and critical of laissez-faire and socialism also. The society also included reformist bureaucrats among its members. Shakaishugi Kenkyûkai (Socialism Study Club), Japan’s first study group of socialism, was also established in 1898 mainly by Christians, although Kôtoku, who was not Christian, was a member. A study of the poor, apparently influenced by the works of the English social reformers, such as William “General” Booth and Charles Booth, Yokoyama Gennosuke’s *Nihon no Kasô Shakai* [*Japan’s Lower Classes*], was published in 1899. Sakai’s interest in socialism therefore flourished at a time when “*shakai mondai*” (social problems) had begun to attract wide public attention.

Sakai himself explains why he became a socialist. Two influences were essential: Confucian teaching based on Mencius, and *jiyûminkensetsu* (freedom and popular rights) deriving from the French Revolution.<sup>52</sup> Despite the introduction of Parliament in 1890, neither social justice nor popular freedoms had been fully implemented. His disappointment was aggravated by intellectual confusion, for he glosses his intellectual background as a typical mishmash of Meiji thought, youthful patriotism, Christianity, British utilitarianism, and Social Darwinism. “I was extremely confused”, he says. But when he encountered socialism, it became clear why the French Revolution failed to achieve its goals and why modern socialism developed in its wake. Socialism provided him with a coherent way of understanding society, his own as well as that of others.

However, as with many of his socialist friends, socialism for Sakai was by no means a matter of inflexible doctrine. Rather it combined the dream of millennial

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For an analysis of the articles in connection with the Jiyûminken Undô, see Shibahara Takuji, “Minkenha no Shakaitô Kyomutôron”, pp. 159-65.

<sup>52</sup> Sakai, “Yowa ikanishite shakaishugisha to narishika [Why I became a Socialist]”, in “Shakaishugi Undôshiwa”, STZ, vol. 6., pp. 191-2.

reform with a strong desire to connect to international movements. Sakai and his friends closely followed the development of the Second International (1889-1941), which brought together representatives of socialist organisations and trade unions in various countries. Thus as major Western sources for the socialist thought entering Japan before the Russo-Japanese War, Crump cites Russian populism, the German Social-Democratic Party (SPD), which dominated the International, and a diverse range of popularised doctrines associated with socialism in the English-speaking countries, including “the ideas of American social-gospellers, of British Fabians and even of New Zealand’s Lib-Labs”.<sup>53</sup> Reflecting such eclectic influences, Sakai and his colleagues of *Heiminsha* commemorated their first anniversary by publishing a set of six postcards carrying the pictures of Marx, Engels, Lassalle, Babel, Tolstoy, and Kropotkin. Sakai himself acknowledges the ideological pot-pourri, and names R.T. Ely’s *French and German Socialism in Modern Times* as the first book that he read about socialism and “the virtual bible of those starting to call themselves socialists in Japan”.<sup>54</sup>

Always supplementing the influence of German social democracy was the anti-authoritarian legacy of Jiyûminken Undô. This in turn drew him to the writings of the Western utopian tradition, and in 1904 he translated Edward Bellamy’s *Looking Backward* and William Morris’s *News from Nowhere*. He was especially impressed by Morris’s reconciliation of community and individual freedom, and more than 20 years later he would remember a passage from *News from Nowhere* while in prison.<sup>55</sup> Bernard Shaw also became one of his favourite authors: Sakai was deeply sympathetic to Shaw’s insistence on the “life force” and to his distaste for hypocrisy in the name of religion. Sakai translated many of Shaw’s works, including

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<sup>53</sup> John Crump, *op. cit.*, p. 31.

<sup>54</sup> *ibid.*, p.58. Crump asserts that other books read widely among the early socialists are Schaffle’s *Quintessenz des Sozialismus*, Thomas Kirkup’s *An Inquiry into Socialism*, W. H. Dawson’s *German Socialism and Ferdinand Lassalle* and his *Bismarck and State Socialism*.

<sup>55</sup> See Sakai, “Nyûgoku Zengo”, *Keizaiôrai*, February 1927, STZ, vol. 6, pp. 426-8. The passage is about the protagonist visiting a shop to buy tobacco and a pipe. He has arrived in a future society where buying and selling no longer exist. He is offered a pipe, “something like the best kind of Japanese work”, but hesitates to take it because he is afraid of losing it. “ ‘Don’t you like it, neighbour?’ ” asks the shop assistant. “ ‘Oh yes’, I said, ‘of course I like it’. ‘Well, then take it,’ said she, ‘don’t trouble about losing it. What will it matter if you do? Somebody is sure to find it, and he will use it, and you can get another’ ” (William Morris, *News from Nowhere and Other Writings*, Penguin Classics, 1998 edition, pp. 73-4).

*Man and Superman*, *Arms and the Man*, and *Fanny's First Play*, during the "winter" period when he was unable to engage in open political activities.

However, it is the writings of Marx and Engels that shaped Sakai's thought most firmly. He translated *The Communist Manifesto* and *Socialism: Utopian and Scientific* as early as 1904, and read Kautsky's *Ethics and the Materialist Conception of History* in 1908. But it was not until after the execution of Kôtoku and other anarchists in 1911 that Sakai began to write about historical materialism with conviction.

Two essays of 1912, "Yuibutsuteki Rekishikan" and "Yuibutsuteki Rekishikan Kenkyû", testify to his mature understanding of a materialistic conception of history.<sup>56</sup> The articles appeared in the political magazine *Kokumin Zasshi* published by Sakai's friend and journalist Yamaji Aizan in response to the latter's criticisms of Marxism.

Here Sakai defined materialism by quoting from *The Communist Manifesto*, Marx's Preface to *A Contribution to the Critique of Political Economy* of 1859 (the same short essay that caused a stir in the academy through Kawakami Hajime's commentary a decade later), Engels's *Socialism: Utopian and Scientific*, and *The Origin of Family, Private Property, and State*. Sakai was then at least a decade ahead of mainstream academic awareness.

In the Preface to *A Contribution to the Critique of Political Economy*, Marx challenges the seemingly immutable dominance of existing political, legal, and social arrangements, saying that they are in fact determined by "the material conditions of life". Our consciousness too is determined by our "social existence", because we are social beings and our existence is intertwined with the relations of production. Marx's stress on society and his subjugation of the state to it through his insistence on "the material conditions of life" had immediate appeal for Sakai, for whom society is always "the fundamental and embracing subject".

Hence, he found, changes in the economic foundation lead to the transformation of the whole superstructure, which Marx calls "ideological" forms that encompass law, politics, religion, arts and philosophy. That is, at some stage of

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<sup>56</sup> Sakai, "Yuibutsuteki Rekishikan [Materialist Conception of History]", *Kokumin Zasshi*, 15 January 1912, STZ, vol. 4., pp. 9-14, and "Yuibutsuteki Rekishikan Kenkyû [A Study of Materialist Conceptions of History]", *Kokumin Zasshi*, 15 February 1912, *ibid.*, pp. 14-24.

development, the “material productive forces of society” come in conflict with “the existing relations of production”, leading to social revolution. If social revolution is to succeed, people must be aware of “the contradictions of material life”. And if the system begins to produce contradictions, it ought to be challenged. This assertion became one plank of Sakai’s Marxism, and he duly translates the famous passage from the preface: “In the social production of their existence, men inevitably enter into definite relations, which are independent of their will, namely relations of production appropriate to a given stage in the development of their material forces of production. The theory of these relations of production constitutes the economic structure of society, the real foundation, on which arises a legal and political superstructure and to which correspond definite forms of social consciousness. The mode of production of material life conditions the general process of social, political and intellectual life. It is not the consciousness of men that determines their existence, but their social existence that determines their consciousness.”<sup>57</sup>

That our social existence determines our consciousness was a powerful presupposition for Sakai, providing him not only with a theory of historical progress but also with an empirical method linking our cognitive ability and the outer world.

“[M]aterialism conceives nature as the sole reality”,<sup>58</sup> says Engels, who insists on the superiority of this “reality” to metaphysics. This does not mean that empirical reality is absolute. On the contrary, it must be subjected to our reasoning powers, which are also challenged by it. In this logic, reality and reasoning are both subject to continuous examination and modification. Thus nature or the outer world is “the objective nature of the things perceived”, and the world is no longer assumed to be “a complex of ready-made things” but “a complex of processes, in which the

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<sup>57</sup> Marx, “Preface to A Contribution to the Critique of Political Economy”, in Lawrence H. Simon (ed.), *Karl Marx: Selected Writings* (Indianapolis/Cambridge: Hackett Publishing Company, 1994), p. 211. The passage is translated into Japanese by Sakai, “Yuibutsuteki Rekishikan”, p.12. Sakai also translates the following: “No social formation is ever destroyed before all the productive forces for which it is sufficient have been developed, and new super relations of production never replace older ones before the material conditions for their existence have matured within the framework of the old society. Mankind thus inevitably sets itself only such tasks as it is able to solve, since closer examination will always show that the problem itself arises only when the material conditions for its solution are always present or at least in the course of formation.” (Marx, *ibid.*, p. 211, and Sakai, “Yuibutsuteki Rekishikan”, p. 13)

<sup>58</sup> Engels, “Ludwig Feuerbach and the End of Classical German Philosophy”, *Karl Marx and Frederick Engels: Selected Works*, 2 vols. (Moscow: Foreign Languages Publishing House, 1962), vol. 2, p. 367. Sakai quotes from the article in his “Kanto ni Kaeru no Shin’igi [True Significance of ‘Back to Kant’]”, *Shinshakai*, vol. 4, no. 3, December 1916, STZ, vol. 4, pp. 273-82.



things apparently stable no less than their mind images in our heads, the concepts, go through an uninterrupted change of coming into being and passing away, in which... a progressive development asserts itself in the end".<sup>59</sup> Behind such an assertion is a strong confidence in reason, recognition of the complexity of social life, and the acceptance of our cognitive limitations. We do not know the outer world as "things-in-themselves", but we know "the objective nature of things perceived". That is the only way to comprehend the outer world and connect self to it. Dialectical materialism boldly asserts relativism for the sake of unity of knowing and being, a relativism that relies both on our sense-perceptions and on reason.

Thus what initially attracts Sakai to materialism is that it severs the existing order from the status of fixed and insurmountable social norms. For him, society is no longer a complex of ready-made things, but a shifting construct of sense-perception and reason. And man is an active agent in this construction. Thus, as in the case of Minobe who also accepted change in the existing norms by endorsing common law, Sakai has secured an approach to social change which can contest the status of morality, religion, and social custom. Materialism frees him from the confinement of existing norms, and his dissatisfaction with the way in which government is run and society operates is now legitimate: debilitating compromise is no longer inevitable, and critique is a defining act for a social being.

Sakai's defence of materialism epitomises the various psychological difficulties that many Japanese faced in building the common life. Shared by all was the perceived force of change. Change, whether contrived or seemingly fortuitous, was everywhere apparent, and appeared unstoppable.<sup>60</sup> But how could they connect themselves as autonomous beings to something in such powerful flux? This problem of connection took a variety of forms. Yet for many, the challenge was to resolve the conflict between familiar forms of behaviour and the new ideas that they had begun to cherish.

Thus, according to Irokawa Daikichi, many *jiyûminken* activists were caught between the new values and the familiar Confucian norms to which they still

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<sup>59</sup> Engels, "Ludwig Feuerbach and the End of Classical German Philosophy", p. 387.

<sup>60</sup> Such perceptions are recognisable in the common usage of the word "*toki*" (time) and its association with force. The words and phrases that combine the two, such as "*jisei*" and "*jidai no susei*", both of which can be translated as "force of time", recur in many polemics written during this period, including Sakai's. Many political and social changes are thus attributed to "force of time".



adhered. For them, their ideal *shishi* lifestyle was no longer confined to the traditional master-servant relationship, or to the model of the samurai fighting for *sonnô jôi*. *Shishi* are now comrades fighting against oppression and trying to establish “free government”. They value the French and American revolutions. Their heroes are those trying to realise “what many people desire”, and who are concerned with realising “the welfare of the public (*shakai taishû no bengi*)”, in the phrase popular around 1885. In this sense, they are pursuing new values. At the same time, they adhere to the familiar Confucian norms, not because they feel comfortable with them but because they do not know how to integrate the new values and the old norms. For them, the norms of behaviour are already given. “What is good or bad is already determined by the traditional norms of behaviour. It is up to your conscience whether you subscribe to good or evil... Thus inner conflict would deepen if one’s desire and the perceived norms of behaviour contradict.”<sup>61</sup> In such circumstances the easiest way-out was the negation of self as a social being and the adoption of an unquestioning spirituality. Even as Irokawa is careful not to generalise excessively from individual cases, he assumes that such conflict only deepened among those who took part in the Jiyûminken Undô when government harassment intensified and their sense of personal failure grew. Irokawa speculates that if the Jiyûminken Undô had survived long enough, its participants might have been able to develop new norms that would match their newly acquired values.<sup>62</sup> Yet reconciliation between the new values and perceived norms became a serious personal problem for many Japanese precisely because they had assumed those norms were fixed.

Sakai too faced such a dilemma in the intellectual upheaval of the early Meiji years. However, dialectical materialism helped him to a new vision of cultural relativism and historical process. And this provided him with the freedom to explore not only society but also the self. From here on, matters of objectivity and subjectivity, self and other, private and public, became not less pressing but less problematic.

From 1912 onward, Sakai explicated the new creed in a number of articles. Attacking religion, state, social customs that keep women as “second-class” citizens,

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<sup>61</sup> Irokawa Daikichi, *Shinpen Meijishi*, p. 50.

<sup>62</sup> *ibid.*, p. 52.

and education as a mere moulding of minds for the national purpose, these polemics are a natural outgrowth of Sakai's understanding of Marxism as a critique of existing political, economic and social arrangements. Yet the core of Sakai's materialism was dialectic, and remained so, even as many supporters of socialism and communism began to interpret historical materialism as an inevitable "economism", in as much as society must evolve naturally within the economic process, regardless of individual effort.<sup>63</sup>

At the same time Sakai's polemical defence of historical and dialectical materialism is conducted in the face of persistent hostility. To many of his critics the idea of historical progress as "the development of material forces" is antithetical to their mythic notions of the national past and their adherence to the idea of never-changing "truth" and ideals. Thus Yamaji criticises the vision of class struggle as cruel, and historical materialism as "a cold view of history". He feels an "intuitive animosity" against it, for it ignores the presence of heroic individuals in history, and undermines humane philosophy. Sakai responds that historical materialism, like Darwinian evolution, is severe, not cruel, and each corresponds to the law of nature (*rihō*).

According to Sakai, he and Yamaji have fundamentally different views of the state. Yamaji sees the state as the outgrowth of the communal spirit inherent in man. Sakai does not dismiss the importance of the spirit of community in history, but he regards Yamaji's views as naïve, because they ignore the presence of social conflicts. For him the state is the projection of the power relations of society, although it has a most dominant presence. Sakai quotes Engels to the effect that "the state is... a product of society at a certain stage of development". Thus, "a power seemingly standing above society became necessary for the purpose of moderating the conflict, of keeping it within the bounds of 'order': and this power, arisen out of society, but placing itself above it, and increasingly alienating itself from it, is the state".<sup>64</sup> Thus, for Sakai, it is legitimate to criticise the state, and patriotism cannot paper over the cracks in the existing social fabric.

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<sup>63</sup> Arahata Kanson, "Tōhisha" in *Seikatsu to Geijutsu*, quoted by Sakai, "Gomashio Atama [Grey and Black Head]", *Kindaishisō*, from October 1913 (vol. 2, no. 1) to September 1914 (last issue), STZ, vol. 4, p. 91.

<sup>64</sup> Engels, "The Origin of Family, Private Property, and State", *The Marx-Engels Reader*, p. 752. Sakai includes his translation of the passage in "Yuibutsuteki Rekishikan Kenkyū", STZ, vol. 4, p. 22.

In this way Sakai's acceptance of historical materialism entails a view of himself as the victim of the existing system as manifested in the state. Such self-identification is essential to determining how one sees not only the state but also social relationships. For if our opinions are shaped by our perceptions of "social" problems, so are our perceptions a reflection of how we identify ourselves in society. Sakai is very much aware of his position in such relativist terms. Thus, in 1921 he criticises Yoshino Sakuzô (1878–1933), one of the most influential critics of the political system during the Taishô period, an advocate of "government based on the people" (*minponshugi*), and an occasional collaborator of Sakai's, for his "neutrality" in the labour movement. According to Yoshino, workers deserve our sympathy because of their poor working conditions, but this does not mean we should endorse every action workers take. In direct repudiation of materialism, Yoshino claims that people should act according to "righteousness", not group affiliation. For Sakai, righteousness is relative. It must be qualified by attending to the specific interests of the parties involved and the expected effects of their actions. Otherwise, righteousness becomes a mere chameleon of discourse that imposes private values on others.<sup>65</sup> Around the same time Sakai lodges a similar criticism against Kawakami Hajime (1879–1946), a professor of economics at Kyoto Imperial University and "one of the founders of Japanese Marxism",<sup>66</sup> for the latter's insistence on universals: such attitudes diminish man's critical engagement with history and society.<sup>67</sup>

Relativism, however, does not by any means imply the rejection of all social values. On the contrary Sakai, adhering to his principles, believes that if moral forces are to be capable of directing the people as a whole, they must be rooted in the present, and be equally shared. For his political sensibility ideals imply "a mind that

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<sup>65</sup> Sakai, "Tare no koshieta Dôrika [Who Makes Justice?]", *Shakaishugi*, March 1921, STZ, vol. 5, pp. 84–8. As for Yoshino's position, Tetsuo Najita says: "He conceived of democracy as a pure metaphysical ideal, and it was idealism that led him, toward the end of his life, to deny in sweeping fashion the democratic potential of organized political activity—a denial which a supporter of liberal or social democracy in the West at that time would have found difficult indeed to uphold" (Najita, "Some Reflections on Idealism in the Political Thought of Yoshino Sakuzô", in B.S. Silberman and H. D. Harootunian (eds.), *Japan in Crisis, Essays on Taisho Democracy*, Princeton, N. J.: Princeton University Press, 1974, p. 31).

<sup>66</sup> Gail Lee Bernstein, *Japanese Marxist: A Portrait of Kawakami Hajime (1879–1946)* (Cambridge, Mass.: Harvard University Press, 1976), p. vii.

<sup>67</sup> Sakai, "Kawakami Hajime kun o hyôsu", in *Kyôfu, Tôsô, Kanki* (Tokyo: Shûeikaku, 1920), STZ, vol. 4, p. 425.

recognises its dissatisfaction with the present and seeks fulfilment".<sup>68</sup> A belief in socialism therefore entails a belief in society's transformative power, politics and vision alike generated by social forces.

Yet always for Sakai materialism is primarily a means of connecting self and society. Thus a key theme of his articles in the 1910s is the common practice of separating ideal and reality. Accordingly a series of essays appeared in *Kindaishisô* from October 1913 to September 1914, which reflect the strong influence of Karl Kautsky. Kautsky, a major interpreter of Marxism and a leading theorist of the Second International who lived with Engels for several years until the latter's death, had reinforced Marxism's criticism of the Kantian dichotomy between the world of phenomenal appearance and "*noumena*".<sup>69</sup>

This series includes an article revealingly entitled "Jiyû to Hitsuzen [Freedom and Necessity]". Although the title is a direct quote from one section of Kautsky's book, the article is Sakai's own meditation on ideal and reality, theory and practice. Sakai wrote the article when he was banned from overt political activity in the wake of the High Treason Incident. Yet at that time young socialists such as Ôsugi and Arahata Kanson remained eager to act promptly. Sakai was not so sure. Idealism alone seemed no longer viable, and caught between his socialist ideals and the realisation that the present situation did not allow him to act as he wished, Sakai concludes that necessity does not contradict freedom as long as we maintain our ability to judge and decide.

In his *Ethics and the Materialist Conception of History*, Kautsky had dealt with fundamental questions inherent in historical materialism and determinism. Why

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<sup>68</sup> Sakai, "Yuibutsushikan to Risôshugi [Materialist Conception of History and Idealism]", *Kaizô*, February 1920, STZ, vol. 4, p. 443. The passage echoes the following from Karl Kautsky: "The constitution of nature external to us and of my own body produce necessities which force on me a certain willing and acting which being given according to experience can be reckoned with in advance" (Kautsky, *Ethics and the Materialist Conception of History*, translated by John B. Askew, fourth edition, revised, Chicago: Charles H. Kerr & Company, 1918, p. 63).

<sup>69</sup> Kautsky says: "Certainly this latter [the *noumena*] is for us unknowable, it lies outside of our experience, so that there is no need to deal with it; one might simply take it as a method of designating the fact that our knowledge of the world is always limited by the nature of our intellectual faculties, is always relative, that for us there can only be relative and no absolute truths, not a final and complete knowledge, but an endless process of knowing" (*ibid.*, pp. 40-1). Kautsky criticises Kant for his failure to recognise the real world. Even if we cannot recognise a thing itself, we can recognise the real differences between things, according to Kautsky. As for morality, he says, "The moral law already includes conditions which belong to the world of the senses. It is not a law of the 'pure will' in itself, but a law of the control of my will when brought in contact with my fellow men. It assumes this; for me, however, these appearances are from the world of the senses" (*ibid.*, p. 53).



do men, who are supposed to be free, feel a certain action necessary? If history has a direction, how can we assert our freedom? Kautsky's answer is that we choose our own aims as "active agents". Necessity belongs to the past, "the world of experience", and freedom to the future. But standing on "the boundary," we make our own judgements. In this sense, necessity and freedom both facilitate our action. Sakai is aware that in his case such choice is limited. Yet necessity complements freedom, because it is still he who decides. Materialism was then for him an assertion of the resilience of autonomy at a time of severely restricted freedom. "Idea cannot match necessity completely. But we should try to reconcile them as much as possible. Otherwise, we will be left only with disappointment."<sup>70</sup>

Sakai at this time was deeply aware of what he felt was a growing preference for the ineffable, incompatible with the need to unify necessity and ideal through continuous self-examination. "People often say that the human intellect is only partial, compared to the wholeness of intuition. Science based on intellect, thus, has only a partial function... To follow our intuition is the right way to act. Intellect should be subjected to the senses and intuition."<sup>71</sup> Sakai challenges such a view, saying that intellect and intuition are inseparable.<sup>72</sup>

Sakai's objection is a Marxist's response to what he sees as the "assault on thought" by intuition, in the forms of popular "spiritualism", the emphasis on "morality" by government and some intellectuals, and the rise of a prevalent pseudo-philosophy, in which half-baked thought is presented to the public in language not clearly expressed. All these trends, which themselves reflect the fluid yet capricious mood of post-Meiji society, are accepted or benignly overlooked on the assumption that intuition and spirit belong to a higher realm.

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<sup>70</sup> Sakai, "Gomashio Atama", STZ, vol. 4, p. 92.

<sup>71</sup> *ibid.*, p. 95.

<sup>72</sup> Thus, following Kautsky's footsteps, Sakai criticises the neo-Kantian call for "Back to Kant", which was understood in Japan as a criticism of naturalism in literature and of materialism and socialism in general. In 1917, Sakai, not unlike Minobe, asserts that *sein* (is) and *sollen* (ought) cannot be separated from each other. See Sakai, "Kanto ni kaeru no Shin'igi", STZ, vol. 4, pp. 273-82. *Sollen* and *sein* are linked with each other by a dialectical method, according to Sakai. Likewise, "intuition" and "the will" are not contradictory with each other. He criticises the writer Morita Sôhei for claiming that socialism has come to a standstill and what we need is "*sollen*". According to Morita, human beings possess what machines cannot explain, that is, the human will, the will to improve self, and the admiration of ideals. For him, the will is synonymous with ethics. For Sakai, however, ethics is a kind of "constructed" institution that has been nurtured by society and is deeply ingrained in it.



Sakai's objection to this seeming disparagement of thought and language is part of his social vision. For Sakai thought must be expressed clearly if it is to communicate with others. Asserting something that transcends mutual understanding is mere mystification, or worse distortion. His linking of comprehension with expression reflects Sakai's belief in a communicative community. Socialism is firmly associated with new ways of conducting the common life. Thought ought to be social, in the sense that it ought to be understood by others. So in the 1912 articles, Sakai translates Marx's vision of a civil society (*bürgerliche Gesellschaft*), "the totality of the material conditions of life", into "*shiteki shakai*" and "*minkan shakai*" (a society of private people).<sup>73</sup> For Sakai understands that historical materialism concerns such a society, and advocates its transformation into a communicative, and thus truly civil society.<sup>74</sup> "Human knowledge", he says, "is still limited, and social and personal matters are full of the unknown. That is why we communicate with others, trying to let others know what we have already learned."<sup>75</sup> In this way the political health of a society will always depend on the quality of discourse active within it.

For Sakai then socialism is intensely humanistic, in that it concerns common needs and seeks rational ways of addressing social problems. It constitutes one's moral stance towards the outer world, intensely critical of it, but at the same time attempting to connect oneself to it in a meaningful way. Socialism is a process in which one interacts with society without presupposing any absolute truth that can dictate this relationship.

In his determinism, Sakai maintains his utopian view of society and a belief that human history is a history of progress. Historical materialism does not promise the final stage of justice: the abolition of the present capitalist system merely means

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<sup>73</sup> Marx's vision of civil society is more restricted: "My inquiry led me to the conclusion that neither legal relations nor political forms could be comprehended whether by themselves or on the basis of a so-called general development of the human mind, but that on the contrary they originate in the material conditions of life, the totality of which Hegel, following the example of English and French thinkers of the eighteenth century, embraces within the term 'civil society'; that the anatomy of this civil society, however, has to be sought in political economy" (Marx, "Preface to a Contribution to the Critique of Political Economy, *Karl Marx: Selected Writings*, *op. cit.*, pp. 210-1).

<sup>74</sup> Umemori Naoki reaches a similar conclusion based on his study of Sakai's advocacy of vernacular usage. See Umemori Naoki, "Nijūseiki no Shōnen yori Ojisan e [A Letter from a Boy in the 20<sup>th</sup> Century to His Uncle: 'Vernacular Revolution', 'Household' and 'Socialism' in the Thought of Sakai Toshihiko]", *Early Japanese Socialist Studies*, No. 10, 1997, pp. 39-56.

<sup>75</sup> Sakai, "Gomashio Atama", p. 93.

the beginning of a new era when people will be free from subjugation and can explore that freedom. "You might think that such a view is extremely optimistic. But at the bottom of our hearts we socialists all have such a hope. Our messiah is not a traditional hero but the working class itself."<sup>76</sup>

Serious problems remained, however. Were there appropriate conditions for the Japanese to form such a life? Were they autonomous enough to direct their own affairs? Habermas, as we know, asserts that open and unobstructed debate is essential to consensus making.<sup>77</sup> Pre-war conditions in Japan by no means appeared to assure that debate. Maruyama Masao, pointing out "problems" of modernisation which made it difficult for the Japanese to voluntarily form their own associations, describes two periods, one the years from around 1900 to 1910, and the other the years immediately following the Great Kanto Earthquake of 1923, as two of the most obvious turning points when transformation in Japanese society became apparent.<sup>78</sup> He speaks of the forces of "rationalization, mechanization, and bureaucratization", and he describes the two periods as points when individuation assumes sharp focus. By individuation he means representative reactions to "modernization", disruptive and emancipating simultaneously. Yet these periods see a growing number of atomised people unwilling to establish solidarity with their fellow citizens voluntarily. Several factors contribute to this trend: government harassment, the increasing regimentation of society and government, separation between cities and the country in both materialistic conditions and the popular imagination, and the unstable economy, which made many white-collar workers feel hapless. This problem of association is particularly discernible among the youth, for "the Japan in which the younger generation lived was a country where a fundamental construction of the national state had almost been completed and social life had begun to be

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<sup>76</sup> Sakai, "Yuibutsuteki Rekishikan Kenkyû", STZ, vol. 4, p. 24.

<sup>77</sup> Habermas notes: "Decisions for the political struggle cannot at the outset be justified theoretically and then be carried out organizationally. The sole possible justification at this level is consensus, aimed at in practical discourse, among the participants, who, in the consciousness of their common interests and their knowledge of the circumstances, of the predictable consequences and secondary consequences, are the only ones who can know what risks they are willing to undergo, and with what expectations" (Jürgen Habermas, *Theory and Practice*, translated by John Viertel, London: Heinemann, 1974, p. 33).

<sup>78</sup> Maruyama, "Patterns of Individuation and the Case of Japan: A Conceptual Scheme", in Marius B. Jansen (ed.), *Changing Japanese Attitudes Toward Modernization* (Princeton, N. J.: Princeton University Press, 1965), pp. 489-531.

managed by routine”.<sup>79</sup> Ishikawa Takuboku clearly fits the diagnosis. The “over-sensitive response, on the part of the government, to every show of marked individuation” also worked to perpetuate “traditional conformism and the attitude of silent obedience”.<sup>80</sup>

Maruyama continues: “Nor do political oppression or social pressure tell the whole story. As long as the ideologies of ‘individualism’ or ‘democracy’ are associated with what is urban, and as long as the reality of the mammoth city, represented by Tokyo, makes alien to the people the idea that there does also exist an ASSOCIATIVE form of individuation, then there will always be the psychological tendency to identify political and social chaos as well as lack of solidarity with individuation *per se*; the attraction to the ‘aseptic’ will continue to frustrate efforts to strengthen, by exposure, the body’s resistance to, or toleration of certain germs.”<sup>81</sup>

Thus Maruyama defines the widespread antipathy to the new social forces, and the common assumption that “individuation” is socially suspect. What then of the significance of Sakai’s Marxism in such a society? After World War I, Marxism had swept through the academy, and explaining why so many intellectuals were attracted to it, Maruyama cites the attraction of structural analysis and the assertion of the new subjectivity in learning. Yet the early Meiji tradition, when Comte, Rousseau, Herbert Spencer, and Henry Thomas Buckle, were widely read, was now replaced by a growing specialisation of disciplines as well as the consolidation of the state. Nevertheless Sakai’s socialism emerges out of the new alignments of power and learning, even though for some, it is profoundly alien.

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<sup>79</sup> *ibid.*, p. 511.

<sup>80</sup> Maruyama says: “ ‘You may as well contend against the authorities as reason with a crying child’ was the attitude that prevails especially in the rural sectors where the individuation process had not penetrated. That is to say, the prevalence of the PA type did not mean that the privatized and/or atomized individuals has become the majority in Japanese society. Furthermore, the behavior pattern fostered in the *ie* (family) or *buraku* (hamlets) continued to influence the people living in large cities” (*ibid.*, p. 528). Yet if definitely government’s “overbearing” attitudes hindered the formation of spontaneous associations, the people were not mere passive recipients of government policy, and the government also had to respond to their opinions. “Over-sensitive” response was very often directed at a specific movement which those in power saw as most harmful to their ruling. In my view I think we need to look more closely at interactions between government and people, and the operation of certain institutions, such as law, to understand the interaction, before we conclude that the ruling oligarchy “could perpetuate its own rule by encouraging the traditional conformism and the attitude of silent obedience”.

<sup>81</sup> *ibid.*, p. 531.

At this stage, however, Sakai's socialism is seriously indifferent to the masses. Such weakness becomes clear if we compare his writings to such things as the more concrete criticism of the impact of industrialisation on Japanese society addressed by Yokoyama Gennosuke in his "Nihon no Shakaiundô" of 1898.<sup>82</sup> Here Marxism and other economic theories are discussed within the context of immediate social problems, with concern for rising inflation, labour disputes, and various tax increases. Furthermore in December 1897, the Iron Workers' Union, widely regarded as the first trade union in Japan, was organised in Tokyo with over one thousand members.<sup>83</sup> Increasingly aware of the limitations of his thought, and of the examples of Yokoyama and his followers, Sakai late in his life began to replace *shakaishugi* (socialism) with *shakaiundô* (social movements). In the next section I will therefore examine this shift in his thought in response to immediate social and political change.

### 3.3. Sakai's socialism: from visionary Marxism to proletarian engagement

The Russian Revolution in 1917 and the subsequent establishment of the Soviet Union in 1922, the collapse of the German Empire in 1918, and the growing domestic demands for broader political participation exposed Sakai's socialism to new challenges. Until then, his socialism was a privately cherished personal belief. With the absence of a self-assertive working class in Japan, Sakai knew that his political beliefs were founded upon utopian ideals. The post-war international and

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<sup>82</sup> Yokoyama included the essay as an appendix in his *Nihon no Kasôshakai*, an acute observation of the urban poor, factory workers, and tenant farmers. See Yokoyama, *Nihon no Kasôshakai*, Iwanami Bunko, 1985 edition, pp. 341-89. He modelled his reportage on the writings of English social reformers such as Charles Booth's *Life and Labour of the People in London* (1891-1903) and the founder of the Salvation Army William "General" Booth's *In Darkest England, and the Way Out* (1890). For an account of Yokoyama's life, see Tachibana Yûichi, "Yokoyama Gennosuke shôden", *ibid.*, pp. 397-407.

<sup>83</sup> See Katayama Sen, *The Labor Movement in Japan* (Chicago: Charles H. Kerr & Company Co-operative, 1918), p. 38. For an account of early labour movements, see also Takano Fusatarô, *Meiji Nihon Rôdô Tsûshin*, Iwanami Bunko, 1997.

domestic developments changed such a “reclusive” view. Cautiously, but also euphorically, Sakai moved to “collective” political activities.

It is difficult to give a clear-cut assessment of Sakai’s view of the newly fledged Soviet Union. Like many other socialists, he rejoiced in the birth of the first worker’s state. And yet the dominance of a single party contradicted his egalitarian views, unless present arrangements were considered transitional. This dilemma is reflected in his involvement in the establishment of the illegal Japanese Communist Party in 1922, and then in his departure from the party in 1924, when it became more and more under the influence of the Soviet-led Comintern. During this brief period, Sakai appears to have abandoned his parliamentary position, hoping to see a Soviet-style proletarian revolution occur in Japan.

On his departure from the party, Sakai became increasingly involved in proletarian movements. Both national and local assemblies were at the centre of his political activities.<sup>84</sup> His admiration for Lenin and for the idea of a worker’s state remained, but he appears to have adhered no longer to the idea of a “vanguard” party, and instead envisaged a “united front” of different social classes in a capitalist society. None of the movements lasted long enough to steer the masses because of government harassment and internal disagreement. However such an emphasis on “solidarity” was a bold attempt to affirm society rather than state. This section will examine that phase of Sakai’s socialism when popular participation in politics appeared to him a possibility.

The year 1919 witnessed “the most drastic progress” in people’s attitudes towards politics in general in Japan, according to Sakai.<sup>85</sup> Amid the global changes, domestic unrest, evident in the growing number of labour disputes and the Rice Riots of 1918, was causing considerable upheaval. The Rice Riots symbolised the people’s protest at the human costs of the government policy of national expansion. The mood of change excited many, as seen in the formation in late 1918 of various groups calling for political reform such as the Reimeikai and Shinjinkai. The government was obliged to promise that it would not prevent the dissemination of “foreign” ideas as long as they respected the spirit of the nation and did not trigger drastic social

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<sup>84</sup> These activities will be documented in my next section.

<sup>85</sup> Sakai, “Preface”, *Kyôfu, Tôsô, and Kanki*, STZ, vol. 4, p. 416.



change. And it had to state that the law did not ban trade unions.<sup>86</sup> These moves all encouraged domestic pro-democracy movements.

This more assertive public encountered renewed urgency in a bureaucracy keen to align the populace within its perceived goals for the national good. Thus in 1919, the Home Affairs Ministry launched a nation-wide campaign to “foster national strength” (*Minryoku Kanyô Undô*) so as to overcome the post-war “slackening of social order” by promoting savings and frugality. Recognising a pattern in pre-war government public policy, Sheldon Garon notes: “Following both the Russo-Japanese War and World War I, the public was warned again and again of Japan’s ‘coming peacetime economic war’ with the Western powers and the need to work hard, make sacrifices, and rally behind the state.”<sup>87</sup> It was clearly felt that the relationship between state and society, and the state and the individual, required reshaping.

At the same time reactionary movements also sprang up, including the establishment of new nationalist groups. Polarisation of opinion over the new national policy was also discernible within government. Thus while the Cabinet of Prime Minister Hara Takashi was signalling its willingness to co-operate on U.S.-led international efforts for post-war disarmament, a unit of the Japanese Army stationed in Manchuria was reinforced, thereby becoming the Kwantung Army, and enhancing the military’s autonomy in the region. Maruyama therefore finds in the year 1919 the first signs of the fascist period. Nevertheless democratic and reactionary trends flourished simultaneously, and are perhaps discernible in the demise of Sakai’s own publishing house, Baibunsha, which broke up in March 1919, when Takabatake, a key member of the house, and others began to advocate state nationalism.<sup>88</sup>

Against this background, debate about social problems (*shakai mondai*) grew apace. In the wake of the Russian Revolutions and the growing interest in social change, Marxism became popular among academics, writers and students. Kawakami Hajime’s *Shakai Mondai Kenkyû* sold tens of thousands of copies. Takabatake and Yamakawa both published their respective commentaries on Marx’s

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<sup>86</sup> Sakai, “Taishô Hachi-nen no Shakaiteki Sôkanjô”, *Yuibutsushikan no Tachibakara*, STZ, vol. 4, p. 475.

<sup>87</sup> Sheldon Garon, *Molding Japanese Minds* (Princeton, N. J.: Princeton University Press, 1997), p. 13.

<sup>88</sup> Sakai, “Shakaishugi Undôshiwa”, *Chûô Kôron*, June 1931, STZ, vol. 6, pp. 249, 254.

*Capital*. The government still prohibited socialist propaganda, but allowed these publications in the name of academic research.

Sakai himself embraced the sense of a new era. In such a chaotic period, thought of all kinds was undoing the old attempts at synthesis. Yet he would stick with Marxism. He acknowledges that it is now prone to division, and that he cannot say at this moment to which school he belongs. But loyal to the old determinism, he proclaims the abiding importance of material circumstances.<sup>89</sup> “A certain period has a certain trend, and each country has its own peculiar features. The combination of the two will determine what kind of political movement gains force in each country... Now it is difficult to tell where the general trend of time will go, given the chaos and new developments in Europe and the United States after the war, and how national features will take shape... It is better to prepare for the future, help promote the general trend, and wait.”<sup>90</sup> Clearly his Marxism faces new challenges in the face of accelerated social change.

Socialism for Sakai always seeks both individual freedom and communal solidarity. Yet until the mid-1910s, his socialism remained relatively aloof and utopian. The short-lived Socialist Party of Japan, which he had helped to establish in 1906, for instance, remained far more an ideological group than a party with any real prospect of participating in mainstream politics.

That climate changed for good in the late 1910s. Sakai ran for the general election in 1917. Although he and his supporters were not able to mount an effective campaign because of police harassment, a diverse range of people rallied round him, including the writers Baba Kochô, Ikuta Chôkô, and Abe Isoo. A new civil movement was emerging,<sup>91</sup> and during this period Sakai actively sought out new alignments and made contact with those seeking new political and social arrangements, such as Yoshino Sakuzô,<sup>92</sup> and with the labour activists. In his

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<sup>89</sup> Sakai, “Marukusushugi no Hatajirushi [A Motto for Marxism]”, *Shinshakai*, vol. 6, no. 1, May 1919, STZ, vol. 4, pp. 321-4.

<sup>90</sup> *ibid.*, pp. 323-4.

<sup>91</sup> See Matsuo, *Futsûsenkyo Seido Seiritsushi no Kenkyû*, pp. 110-1. Co-operation between liberal writers and socialists in suffrage movements started during the “winter” period. Sakai supported Baba’s candidacy in the general election in 1915 behind the scenes. Yasunari Sadao, a Baibunsha associate, became chief of Baba’s election campaign. Many writers supported Baba’s candidacy, and Natsume Sôseki was one of many contributors to the 1,127-page collection of essays published to raise funds for Baba’s campaign. See *ibid.*, p. 109.

<sup>92</sup> Matsuo, *Taishô Demokurashî*, pp. 168-75.

writings he probed the old separation between politics and society, and made social problems his central focus.

This was also the period when Kawakami Hajime articulated the key distinction between social problems (*shakai mondai*) and social policy (*shakai seisaku*).<sup>93</sup> According to Kawakami, social policy is widely used to refer to policies about production. That is why it is discussed frequently within government and in the academy. However, he claims, social policy should also concern itself with the more equal distribution of wealth so as to alleviate social distress. Sakai supports Kawakami's claim, despite his criticism of the latter's rejection of historical and dialectical materialism.<sup>94</sup>

Thus, in an article of 1919, Sakai attempts to explain why social problems and political problems have become detached from each other.<sup>95</sup> In Japan, political movements began as protests against government, as in the case of the Jiyûminken Undô. However, since the promulgation of the Meiji Constitution, activists have become either members of Parliament or government sympathisers. Capitalist pressures have facilitated such fusions with the ruling class, and political movements have lost their original role. Through this process "political movements are no longer respected nor feared. They may be despised or rejected as much as before, but their meaning has completely changed".<sup>96</sup> Politics itself has little time for the crucial task of winning popular trust.

On the other hand, social movements, which were once considered apolitical, including charity and relief work, the elimination of prostitution, campaigns against alcohol and smoking, and the literary movement in favour of the vernacular, all of these are political, because they are related to the gap between rich and poor and so concern the whole society. Thus, says Sakai, if the political movements of the past have been absorbed into the status quo, social movements have now replaced them as critiques of government and of the economically privileged class.

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<sup>93</sup> Kawakami Hajime in *Shakai Mondai Kanken [Current Views on Social Problems]* (Kyoto: Kôbundô, 1918), quoted by Sakai, "Kawakami Hajimekun o hyôsu [Private Opinions of Kawakami Hajime]", *Shinshakai*, March 1919, STZ, vol. 4, pp. 417-28.

<sup>94</sup> For their debate, see Gail Lee Bernstein, *Japanese Marxist: A Portrait of Kawakami Hajime*, pp. 113-5. For the introduction of the concept of social policy in Japan, see *ibid.*, pp. 52-5.

<sup>95</sup> Sakai, "Seijiundô, Shakaiundô, and Rôdôundô [Political, Social and Labour Movements]", *Kyôfu, Tosô, Kanki*, STZ, vol. 4, pp. 500-9. The article was originally written in 1919.

<sup>96</sup> *ibid.*, p. 502.

In this way “the new political social movements have become the No.1 enemy of government and of the ruling class in general, and they have tried to suppress them. That is why such thought is labelled dangerous. Attempts to suppress it, various confrontations, oppressions and explosions have begun to take place.”<sup>97</sup>

Clearly, for Sakai, the distinction between social and political has begun to blur because ordinary people have begun to express their opinions directly. These activities are still unconscious, lacking a clear sense of class identity or political direction. Nevertheless such movements are taking place against a background of more assertive individuals and workers. These new social and political movements have so far failed to develop as conscious acts, mainly because the government has acted before they began to develop as broader civil movements. However, the new forces, “led or exploited by disenchanted politicians, have become an unconscious (or semi-conscious) harbinger movement. The Rice Riots in 1918 were such a movement.”<sup>98</sup>

So in 1915, Sakai rebuked the masses for their lack of consciousness as the exploited class.<sup>99</sup> In fact, many activities in Japan appear to be taking place without clear consciousness, according to Sakai.<sup>100</sup> Japanese society appears to be a vortex of merely personal desires and intentions. Yet for Sakai, consciousness means class consciousness, and many Japanese are found wanting.

No essay in the *Zenshû*, the six-volume collection of Sakai’s writings, addresses this question directly. However, an article he wrote in 1919 for *Shinshakai*, apparently based on Marx and Engels, and especially on Marx’s “The Civil War in

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<sup>97</sup> *ibid.*, p. 503.

<sup>98</sup> *ibid.*, p. 504. Sakai learned this view of unconscious social movements from Engels or Marx. For instance, Engels says, “In the history of society... the actors are all endowed with unconsciousness, are men acting with deliberation or passion, working towards definite goals; nothing happens without a conscious purpose, without an intended aim... But when on the surface accident holds sway, there actually it is always governed by inner, hidden laws and it is only a matter of discovering these laws” (Engels, “Ludwig Feuerbach and the End of Classical German Philosophy”, p. 391).

<sup>99</sup> Sakai says: “The capitalist camp, although unconsciously, knows how to exploit the people based on its selfish logic. However, many people, who are supposed to challenge it, lack such [class] consciousness utterly” (Sakai, “Zansho to Shinryô [Staying Heat and New Coolness]” in the first issue of *Shinshakai*, quoted by Kawaguchi, *op. cit.*, vol. 2, p. 74).

<sup>100</sup> Sakai classifies such unconscious or semi-conscious activities into four types: those which seek accumulation of wealth, those which protest against such economic activities, those which try to escape from the new social trends, and those trying to reconcile them. See Sakai, “Yonshu no Hanmuishiki Katsudô [Four Kinds of Half-Unconscious Activities]”, *Shinshakai*, vol. 2, no. 2, February 1916, STZ, vol. 4, pp. 190-202. According to Sakai, he wrote the original essay in 1913.

France” and “The Possibility of Non-Violent Revolution”, implicitly links the absence of consciousness to Japan’s post-Restoration history.

In his article, Sakai interprets the Meiji Restoration as a bourgeois revolution, and explains that the relatively smooth transition from the feudal society of the Tokugawa shogunate into a new capitalist society was due to the features of the existing structure, including the significant political autonomy of the “*han*” domains, which facilitated its dissolution from within, and the keen social insight of the political actors involved. These forces had worked as preparatory instigators of major change. Now there is no such institution capable of leading society into a new stage. “Political parties or companies may have equivalent functions, but they have not yet grown to include elements of the newly emerging class and thus they cannot serve as preparatory organisations.”<sup>101</sup> Sakai points out the peculiar stage Japanese society has reached; a society which has lost its previous framework, but has not yet found a valid replacement. For peaceful revolution to occur, Parliament will have to accept new parties that represent the newly emerging class, and companies must allow workers to influence their operations. A Socialist Party or a Labour Party will be necessary, and trade unions must be encouraged. Thus Sakai points to the absence of institutions capable of representing a new class, and identifies major weaknesses of the present political system.

Another problem affecting social change identified by Sakai is that authority acts as a ruling class, which creates antagonisms among the public and thus creates an imperfectly radical class critical of it. “People who engage in the social movement and the emerging class in general decide their strategy, attitude, and policy in response to the attitudes of the ruling class.” But “no one is willing to take the risk of creating a great many sacrifices when peaceful revolution appears to be possible, because making such sacrifices is painful personally and also entails great loss for society as a whole”.<sup>102</sup> Nevertheless even if no true working class has yet emerged, if there is a ruling class, its behaviour will create groups that are not well disposed towards it. Thus a class may be created by the ruling class, but as yet it is without consciousness, cohesion, or political intent.

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<sup>101</sup> Sakai, “Ishinshi no Kyôkun [A Lesson of the Meiji Restoration]”, *Shinshakai*, vol. 6, no. 3, 1918-19, STZ, vol. 4, p. 339.

<sup>102</sup> *ibid.*, p. 339.



In this way, Sakai asserts that class antagonisms exist even if there is no working class, and they are the creation of the ruling class itself. But in Japanese society there is no institution that represents the emerging class and which can transmit its opinions in the formal decision making process. Without such institutions, class antagonisms erupt as irrational momentary outbursts of personal grievance. Thus Sakai now moves to interpret the absence of co-ordinated behaviour among the masses not as reflecting a settled and self-defeating "lack of consciousness" but as rooted in the problems of institutions. For only institutions can give coherence to what is otherwise irrational, unrelated, sporadic behaviour. Freedom of speech, freedom of association, and universal suffrage are all indispensable, and thus the absence of conscious behaviour and the separation among political, labour and social movements are all to be explained historically and attributed to the absence of a linkage institution. This for Sakai means Parliament, defective though that may be.

"Hence the labour movement is a social movement, and they are both political movements. However, the labour movement has elements not directly linked to politics, and some aspects of the social movement are not directly linked with the labour movement... the immediate means to link them together is universal suffrage."<sup>103</sup>

Thus Sakai's criticism of the separation between society and politics stems from his own observations reinforced by his understanding of Marx and Engels: their emphasis on the origins of capitalist revolution, the nature of resultant bourgeois government, and the need for proletarian revolution. Yet for him, the transition from a feudal system to a capitalist system during the Meiji Restoration is real because it is "lived experience". He has nurtured his critical views of government policy as a witness and as a socialist, and these issues are relatively easy for him to deal with.

However, questions for the future such as how to realise a proletarian revolution and exactly what a proletarian revolution might mean for Japanese society, are more difficult. In fact, Japanese Marxists were without agreement on these issues, to say nothing of the disruptive influence of intensifying government intervention in the wake of the Russian Revolution.

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<sup>103</sup> Sakai, "Seijiundô, Shakaiundô, Rôdôundô", STZ, vol. 4, pp. 505-6.

The impact of the Russian Revolution, fascination with Lenin's thought, and the survival of the Soviet Union deeply influenced Sakai's views about the role of a political party in such a revolution and the shape of proletarian government. Nevertheless until 1921, Sakai remained a strong advocate of universal suffrage, and an implicit Parliamentarian. Yet according to Matsuo Takayoshi, Sakai's adherence to Parliament then waned and he began to call for direct action, as did his close allies Yamakawa and Arahata.<sup>104</sup>

However, Sakai's views about the role of a single party and of party-led revolution were highly ambivalent. He recognises the need for such a party in the transitional period pointed out by Marx and Engels, but the idea of a single party leading the masses indefinitely was incompatible with his egalitarian view of society. Even at the peak of his fascination with the world's first worker's state, he was strongly aware of the need to reconcile majority rule and minority opinions.

Sakai first engaged with these topics in three short essays of 1918. In the first essay, entitled "Tasûketsu to Zen no Igi [Majority Rule and the Significance of Goodness]", Sakai repudiates his daughter's objections to majority rule. "I immediately sensed a kind of obnoxious view in her words, which is similar to that of *tetsugaku-shugi* (philosophical elitism) as taken by some scholars and writers who rebuke 'the stupid masses' and regard themselves above them, also *zenseishugi* (self-righteousness thinking) and *senseishugi* (authoritarianism). So I asked her how we could know that a 'good' person was really a good person, or that a 'good' decision was really a good decision."<sup>105</sup> For a materialist, in other words, the concept of the good is not absolute but relative. Yet this does not mean that it is exempt from any definition. On the contrary, concepts of the "good" must be examined by referring to their impact on the masses. Thus his exposition of a theory of majority rule which

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<sup>104</sup> After the Russian Revolution, socialists such as Yamakawa became enamoured of the idea of an immediate proletarian revolution and were reluctant to take part in the growing universal suffrage movement. Sakai was an exception in advocating the formation of proletarian parties. "It is significant for Sakai to have recognised an opportunity for the formation of proletarian parties in the universal suffrage movement... But no other socialist took up the issue seriously, and Sakai himself failed to come up with a concrete strategy" (Matsuo, *Taishô Demokurashî*, pp. 228-9). As a result, the dominant position of the socialists shortly after the Russian Revolution became a call for proletarian revolution.

<sup>105</sup> Sakai, *Neko no Kubitsuri [A Hanging of A Cat]* (Tokyo: Matsumoto Shôkai Shuppanbu, 1918), STZ, vol. 5, p. 196.

will not exclude minority opinion leads on to his advocacy of communicative democracy:

I think that the fairest and solidest way [of making decisions] is a process by which wise opinions addressed by a minority are chosen or rejected by a majority in terms of their merits. Sometimes authoritarian rule by a small number of wise people and a majority's blind loyalty to their decision may be the most effective and quickest way [of getting results]. But if we take into consideration that the combination of authoritarian rule and blind loyalty can produce enormous damage, the time expended on a one-time detour or wasteful labour is a much smaller loss.<sup>106</sup>

Democracy then, a process by which government policy is monitored and checked by the general public, may be inefficient, but ignoring it would cost society a high price. At the same time Sakai is also alert to the manipulation of majority opinion by a minority: "...[I]n a society where class difference prevails, if a powerful minority trains and manipulates majority opinion through direct and indirect strategies, what appears as majority opinion is in fact that of the minority."<sup>107</sup> He also says: "Sometimes, if a person with strong charisma and authority and with a strong ego insists on his opinions passionately, even minority opinion may take the form of unanimous agreement. Therefore, unanimous agreement is not so sacred, because it may coincide with authoritarian rule."<sup>108</sup> Sakai's view of an ideal political community seems therefore to combine respect for egalitarianism with an optimistic trust in the "common sense" of the masses. Yet it is also accompanied by a strong degree of caution towards the exercise of power.

Nevertheless in 1922 Sakai was close to accepting the Bolshevik "vanguard" party strategy. Yet even during this period, he would call for the creation of social forces by every means available, including freedom of speech, freedom of association, the universal suffrage movement, and parliamentary tactics, even as a sense of desperation strengthened the appeal of direct action.<sup>109</sup> Sakai at this time

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<sup>106</sup> *ibid.*, p. 197.

<sup>107</sup> *ibid.*, p. 197.

<sup>108</sup> *ibid.*, p. 198.

<sup>109</sup> Sakai, "Shakai Kaikakuan to sono Jitsugenryoku [Social Reform Plan and its Feasibility], STZ, vol. 5, p. 126. Sakai did say in this essay that universal suffrage is meaningless because election results are unfair, given the expensive system that prevents the proletariat from taking part in elections, the dominance of "capitalist" institutions such as the media, schools, and temples and

seems deeply divided between the need to accelerate the historical process and the means thought necessary to bring it about.

In 1922 Sakai was chairman of the Japan Communist Party when it was illegally established. However, after his imprisonment in the first large-scale crackdown on communists in 1923, Sakai's doubts about the Comintern's strategy grew. When the party, which was dissolved in 1924, was re-established in 1926 by Sano Manabu, Tokuda Kyûichi and others, Sakai, along with Yamakawa and Arahata, did not join. Instead they established a break-away group, later signalled by the publication of the journal *Rônô* in 1927. The group continued to criticise the party for alienating the masses, and became closer to the growing number of non-partisan organisations.

Sakai never explained the actions he took during this period.<sup>110</sup> Yet his position is implicit in the much publicised debate between the two Marxist camps in pre-war Japan, the *Kôza-ha* which is close to the Comintern and its 1931 and 1932 theses, and the *Rônô-ha* which is critical. Their debate focuses on Japanese capitalism and the character of the needed social revolution. For the *Rônô-ha*, Japanese capitalism has matured to reach the state of imperialism. The next revolution should be a proletarian revolution, which means solidarity among workers and farmers against capitalist domination, and promotion of trade union movements. On the other hand, the *Kôza-ha* emphasises what they see as the remnants of feudalism. To realise a proletarian revolution, Japan needs two revolutions, first the abolition of feudal landownership and the emperor system, and then finally a real proletarian revolution.<sup>111</sup>

Hoston points out that the *Rônô-ha* is "instrumentalist" and the *Kôza-ha* "structuralist". And undoubtedly *Kôza-ha*'s structuralist approach has strength, as seen in Maruyama's analysis of Japanese militarism and fascism. The concept of the emperor system, for instance, is useful to locate structural and symptomatic problems

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churches that produce 'public opinions' suitable for capitalists, and also because of the ignorance of the proletariat. However, after he decided not to rejoin the Communist Party in 1924, he dropped such a view and returned to parliamentarianism.

<sup>110</sup> For Sakai's thought during this period, see Kawaguchi, *Sakai Toshihiko no Shôgai*, vol. 2, pp. 231-2.

<sup>111</sup> For recent criticism of *Kôza-ha*, see for instance, Saitô Seizaburô, "Meiji Ishin no Saikentô", in Nakamura Takafusa and Itô Takashi (eds.), *Kindai Nihon Kenkyû Nyûmon* (Tokyo; Tokyo Daigaku Shuppankai, expanded edition, 1983), pp. 24-5.

of the Japanese political system, such as the operation of *taiken* (imperial ordinance power). However, the Kôza-ha approach is less attentive to the actual terms of political debate, for as Hoston says “the Kôza-ha left the dynamics of contemporary politics to inference”.<sup>112</sup>

Raymond Williams also usefully notes how structuralist approaches “can shift attention from the real location of all practice and practical consciousness: ‘the practical activity... the practical process of development of men’. Any categorical objectification of determined or overdetermined structures is a repetition of the basic error of ‘economism’ at a more serious level, since it now offers to subsume (at times with a certain arrogance) all lived, practical and unevenly formed and formative experience”.<sup>113</sup> This can be applied to the Kôza-ha in terms of its inadequately examined notions of feudalism or social backwardness, items of ideological “grand design” which neglect the actual dynamics of power and relationship. If therefore, for Sakai, structural analysis was a powerful method, manifested in Marx’s and Engels’s emphasis on the totality of things, he also knew, as an active agent in society deeply aware of the practical process of human development, that he could never be content with grappling with structure alone.

In addition, unlike the Kôza-ha, Sakai was always aware of the superiority of society to state. For as Engels had argued, the state is a mere projection of temporal power relations. It is “by no means a power forced on society from without; just as little is it ‘the reality of the ethical idea’, ‘the image and reality of reason,’ as Hegel maintains. Rather, it is a product of society at a certain stage of development; it is the admission that this society has become entangled in an insoluble contradiction with itself, that it is cleft into irreconcilable antagonisms which it is powerless to dispel.”<sup>114</sup> Thus, as though confronting his own version of such an entanglement, Sakai in January 1931 published a pamphlet entitled “Kyôdô Sensentô” (a united front party). The pamphlet was written at a time when various proletarian parties were coming into existence, fusing, and separating again. Thus Sakai’s unified proletarian party will not be class based in a strict sense, nor will it be either social democrat or communist, because it will not have any insistent and inflexible guiding

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<sup>112</sup> Hoston, *Marxism and the Crisis of Development in Prewar Japan*, p. 221.

<sup>113</sup> Raymond Williams, *Marxism and Literature* (Oxford: Oxford University Press, 1977), pp. 88-9.

<sup>114</sup> Engels, “The Origin of Family, Private Property, and State”, *The Marx-Engels Reader*, p. 752.



principle: "The envisaged single proletarian party may be described as a united front of different classes (or social classes) in the capitalist society. It may also be described as a unified front of different stages of consciousness (between different ways of thinking, or between different attitudes about one's social conditions). That is, the front will cover all kinds of stages of consciousness, commitment and character, ranging from the most mature, clearly defined consciousness of resistance of the proletariat to more elementary, ambiguous, or weak anti-bourgeoisie consciousness."<sup>115</sup>

Here, in a passage of mingled strength and weakness, Sakai reveals his Marxist utopian vision of society: his millennial trust in the collective human ability to organise and run society without one group exploiting another. Here too he recognises the plurality of society, searching for a way to unite it for political purposes. Precisely because of the scale of social difference, even within the proletariat, politics has its role for mediation. Politics becomes an affair embracing all members of society, an instrument of social integration.

As a social theory, Sakai's ideas on the united front may appear insubstantial, crude, and not especially practical. Yet as support for a theory of political movement, they have significant implications. For they are meant not only to criticise state power but also to create a social force for self government, a new kind of state power arising out of society, an attempt to make the "social" assume the "political." Politics now becomes a matter of conscious intercourse among members of the community, and Japanese government becomes representative in unprecedented ways. By attempting to return politics to society, Sakai's ideas signal a new assertiveness of society over state.

They also represent an attempt to create a system for the creation of shared opinion. And this task does not seem to have been completed even in our time. Ideological absolutism as represented by the emperor system may have gone. But a credible opposition has yet to emerge. The problems of institutions, of the electoral system, of Parliament, and of finding a viable mechanism for public debate, still remain. Sakai's Marxist vision, especially in its later "unworldly" manifestations, remains immensely relevant to present problems.

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<sup>115</sup> Sakai, *Musantô Zengôdô*, a pamphlet (Tokyo: Rônô Shuppansha, 1931), p. 28, also quoted by

### 3.4. Problems of unity: State, industrialisation and Sakai's vision of solidarity

Late in life then, Sakai began to work for the formation of a “united” front against the “bourgeoisie”.<sup>116</sup> Following Lenin's assertion that imperialism is the highest stage of capitalism, Sakai uses the term “bourgeoisie” to describe the conjuncture of state power and capitalism that is attempting to further exploit workers and farmers to overcome the global recession. At the same time he rejects a Soviet-style revolution led by an elite party. For Sakai, what makes people act together is not party guidance, but their own agreement. However, the predominant role of the state, i.e., government, in shaping “superstructure” and “base” is a major hindrance to spontaneous solidarity movements. In the last two sections of this chapter I will therefore examine the historical significance of such solidarity movements, and Sakai's attitudes to them, against the background of the country's political, social and economic arrangements.

According to Sakai, the potential members of the envisaged front are factory workers, who are the proletariat in a strict sense, tenant farmers, white-collar workers, independent farmers (whose economic conditions are more dire than those of tenant farmers) and property-less self-employed people. Their immediate interests may differ from each other, but they can share their basic goals as they are all exploited by the bourgeoisie. For instance, factory workers' demands for an eight-hour workday and tenant farmers' demands for land cultivation rights may appear to be connected only remotely. But they can relate their interests “as long as those interests contradict those of the bourgeoisie”. This degree of common cause should allow factory workers and farmers to act together, according to Sakai.<sup>117</sup>

Sakai's emphasis on shared interest, rather than party guidance, is in direct opposition to the organisational principle of the Communist Party as stated in the 1931 Theses. Both are critical of state power, but disagree about the components of

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Kawaguchi, *op. cit.*, vol. 2, pp. 273-4.

<sup>116</sup> Sakai's position conforms with that of the Rônô-ha, which was criticised by those loyal to the Communist Party. See Hoston, *op. cit.*, p. 95. For further analysis of the Rônô-ha's position, see *ibid.*, pp. 237-8.

<sup>117</sup> Sakai, *Musantô Zengôdô*, p. 28.

revolutionary force and its sources. The theses emphasise the role of the urban proletariat and its vanguard role in leading the masses. Sakai disagrees. The proletariat is not the only component of revolutionary force against the bourgeoisie in a capitalist society. The vanguard cannot be formed instantaneously, as it too is a product of environment. Thus the vanguard cannot rule the masses unilaterally, as they interact with each other. The people need “a broader, bigger, and more solid” framework that transcends such labels as communism or social democracy.<sup>118</sup> In effect Sakai’s views reveal the presence of that die-hard liberalism, which the 1931 Theses condemn as “a tendency toward right-wing opportunism” that has failed to understand the role of the Party.<sup>119</sup>

Nevertheless when he called for such a solidarity movement in late 1931 in his last political pamphlet, Sakai was trying to hold together the fragile proletarian cause as a leader of the Zenkoku Rônô Taishûtô (National Labour-Farmer Masses Party), one of several defiant proletarian organisations.

The party’s antecedents began in 1923 with the establishment of the Seiji Kenkyūkai group a year after the illegal formation of the Japanese Communist Party. In 1925, the country’s first proletarian party, the Nômin-Rôdôtô (Farmer-Labour Party), was established but banned immediately on a charge that its members included “extreme radicals”. Yet various proletarian groups sprang up undeterred. In 1928, these non-affiliated parties won eight seats in the first general election under universal male suffrage. The period between the emergence of these parliamentarians with a proletarian background and the so-called Popular Front Incident shortly after the outbreak of the Sino-Japanese War in 1937 saw high tension between the proletarian movements and government, and the Communist Party was by then severely suppressed. These proletarian movements represented a new form of popular political action in the era immediately after male universal suffrage.

Fearing signs of the growing influence of communists after the general election, the government intensified its anticommunist repression. Large-scale crackdowns commenced, notably on 15 March in 1928, and then on 16 April. Against this background, Sakai helped organise the Nihon Taishûtô (Japan Mass

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<sup>118</sup> *ibid.*, p. 37.

<sup>119</sup> The 1931 Theses, in English, can be found in George M. Beckmann and Okubo Genji, *The Japanese Communist Party 1922-1946*, p. 318.

Party), a coalition of small proletariat parties, in 1928, and as its candidate won a seat in the Tokyo metropolitan assembly in 1929. After the party was dissolved because of an internal rift, Sakai and others formed a Tokyo-based successor, and Sakai became chairman of a nation-wide federation of similar local groups in March 1930. In July he became an advisor to the newly formed Zenkoku Taishûtô (National Masses Party), which merged with the Rônôtô to become the Zenkoku Rônô Taishûtô in July 1931.

When the 1931 pamphlet was written, the Zenkoku Rônô Taishûtô was trying to link up with another major, non-communist group Shakai Minshûtô (Socialist People's Party). Sakai's optimistic hopes for the alliance were quickly betrayed. In September, the Kwantung Army launched an attack on the Chinese Army to cement its control of Manchuria, an action that paralysed the civilian government in Tokyo. Later in the year, Sakai suffered a stroke, which left him severely disabled. The Taishûtô itself lost momentum, with its members divided over its policy regarding the Manchurian Incident. Amid the increasing war efforts, the proletarian solidarity movements began to flounder. The Zenkoku Rônô Taishûtô and the Shakai Minshûtô, having managed to merge in 1932 to become the Shakai Taishûtô (Socialist Masses Party), gradually accepted the government's expansion policy and the military's initiatives. The death knell for the pre-war proletarian movements came when nearly 450 labour activists and socialists, including Yamakawa, and then dozens of Marxist academics critical of what they saw as the government's imperialistic and fascist measures, were arrested in late 1937 and early 1938 in the so-called Popular Front Incident. With the elimination of these "dissidents" by the government, and "voluntary" ejection of some members, the pre-war solidarity movements ended. As early as 1932, Ôyama Ikuo, a liberal leader of the Shakai Taishûtô, had gone into exile in America. Yoshino, another liberal leader, and Sakai both died in 1933. The Shakai Taishûtô survived as the only legal proletarian party until it dissolved itself to join Konoe Fumimaro's new unity movement in 1940.

Thus the solidarity movement envisaged by Sakai ended without mobilising the masses. Like many other spontaneous activities, it could not survive the growing moves towards totalitarianism, after the Manchurian Incident. However, Sakai's



criticisms of government and society provide us with strong clues for an understanding of Japan's internal problems at this stage.

What Sakai calls the bourgeoisie is really the entire political, economic and social structure. Thus the solidarity movement means a movement seeking the expansion of political freedom as well as the levelling of prevailing inequalities. Sakai's vision of the movement is echoed in the Taishûtô's platform, which includes 60 demands for reform: in politics (6 demands), diplomacy (4), administration (4), military reform (4), the judicial system (6), taxes (9), education (6), labour (11), agriculture (7), and general issues (13).<sup>120</sup> Some of these seek socialist measures such as the abolition of consumption taxes, full progressive taxation, workers' rights to organise, bargain, and act collectively, minimum wages, unemployment insurance, a legal cap on tenant fees, full legal and social equality between men and women, abolition of the peerage system, a ban on the monopoly of transport, electricity, and gas, and free health care. But others call for measures to establish free and responsible government, specifying full universal suffrage, freedom of speech and association, abolition of the Peace Preservation Law, open diplomacy (disclosure of diplomatic affairs), public elections of governors and other heads of municipalities, empowerment of local assemblies, appointment of civilian ministers of the Army and Navy, termination of textbook screening and military education at school, and the open operation of funds kept by the Finance Ministry's Deposit Department. Accompanied by denunciation of Japan's immediate expansion policy, these proposals project Sakai's own view of an alternative form of government based on egalitarianism, free and responsible government, and universal solidarity.

Thus the proposals challenge many practices and institutions on which government stood: taxation, restrictions on popular participation in politics, bureaucratic secrecy, and the expansion policy. Sakai's strategy is to not only engage in political struggle to change those institutions but also encourage change from within society. However, the society Sakai believes is capable of inner transformation is also under severe restraint by the state.

In Japan's modernisation and industrialisation, the exercise of state power was central to introducing a capitalist economy and implementing other far-reaching

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<sup>120</sup> Sakai, *Musantô Zengôdô*, pp. 22-5.



reforms. Such state presence resulted in several features, including exacerbated social division. At the same time, the prominent role that government played in shaping not only the political and economic structure but also the everyday pattern of life complicated people's attitudes towards state authority. And even those critical of government could not agree on the exact role and meaning of the state, as in the case of disagreement between the two Marxist schools, the Kôza-ha and Rônô-ha, in the late 1920s and early 1930s.

In addition the far-reaching role of government was inevitably caught up with the formation of a modern Japanese identity, and again acted to inhibit class solidarity. Many identified with the state, as the state was perceived as the primary projection of their existence. Therefore the degree of one's identification with the state often determined how far one was willing to criticise government. That is one reason why even among those engaged in non-affiliated movements, ideological differences—how right or left their groups should go—became a key issue. Many non-affiliated groups had to be disbanded, because their differences over government policy widened as war efforts intensified, nationalistic sentiments grew, and emphasis on national unity increased. As Minobe complains in 1935, nationalistic propaganda is dividing the public. For a “new” nation, nationalism can both promote and disrupt popular unity.

Furthermore farmers seeking the social recognition of their rights to cultivate land, and workers seeking an eight-hour workday, needed distinct forums to meet and agree that their interests were indeed mutual. Sakai and like-minded people attempted to create such by advocating the formation of a united front. However, given the increasing government harassment, autonomous exchange of opinion among the citizens became difficult, once they had been labelled as critics of government. Sakai's own career demonstrates the severity of government repression. These problems of definition and assembly were intertwined with ideological obstacles to hamper spontaneous civil movements.

In order to understand more fully the difficulties that the solidarity movements encountered, I now propose to examine the kind of state power that arose

along with the development of Japanese industry. Once again Marx's descriptions of the origin and characteristics of the state are useful in order to examine the connections between the failure of the solidarity movements and the country's industrialisation.

Marx's analysis of capitalism is inseparable from his deep concern with the plight of the worker which he believes results from the commodification of labour. Thus alienation, both at the personal and social level, became the leitmotiv of his analysis of capitalism, particularly in his early writings. Similarly Marx's definitions of the state accommodate an overall humanistic critique of capitalism.

Marx provides two different definitions of the state, historical and sociological. The historical definition constitutes part of his material conception of history. The course of history is determined by the dominating productive forces of each period, and the state has emerged "historically" from the division of labour. The rise of the modern state thus coincides with the growth of manufacturing, trade, and commerce.

In his "sociological" definition, Marx sees man as a social being: we live in a community and accept its interests "naturally". State power arises from this general interest. However, this general endorsement is illusory, as long as the division of labour exists, for it merely represents the interest of the dominating economic power, which is "the power of disposing of the labour-power of others". Thus Marx defines state power as "the social power, i.e., the multiplied productive power", which arises from the necessities of the community but has grown to become "an alien force" existing outside people and which they cannot control.<sup>121</sup>

In this definition Marx articulates the permanent conflict between general and particular interests. Marx's answer to resolving this conflict is communism, that is, the abolition of the division of labour and private property. Sakai's answer is social democracy, parliamentary politics, and accountable government, as we have already seen. However, both see state power as the socio-economic forces that divide people and stifle civil society (what Marx calls "the true source and theatre of all history"<sup>122</sup>) and both criticise capitalism and its operators for exerting such powers.

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<sup>121</sup> Marx and Engels, "The German Ideology", *The Marx-Engels Reader*, pp. 160-1.

<sup>122</sup> *ibid.*, p. 163.

Sakai's final vision of the state and society is clearly different from Marx's vision of a communist society where private property—and thus the division of labour—is abolished. Nevertheless Sakai shares with Marx the latter's concern for human conditions in a deeply divided society. It is this humanistic analysis by Marx of "social" power, power which stifles human nature and thwarts civil society, that is relevant to Sakai's criticism of state forces then in operation in Japan. And to understand the general failure of voluntary association in pre-war Japan, we need to examine the nature of this state power, especially in its socio-economic manifestations as these affected the course of the country's industrialisation.

However it is fair to say that a capitalist economy powerful enough to transform social relationships did not exist in Japan even at the outset of the Meiji Restoration. Sakai and the more recent modernisation theorists claim that recognisable potential for such change emerges in the late Tokugawa period, and is discernible in the growing influence of merchants. However, that essence of a capitalist economy, involving the domination of commodities and their circulation as dictated by the modes of production, exchange and distribution, and affecting the whole social structure, was absent even in the early Meiji period when Sakai grew up. The necessary extrication from "feudal" arrangements was carried out by the new government. In this sense, Marx's insistence on the state's auxiliary role in facilitating capitalism does not really apply to Japan's industrialisation. And this historical role of the state was well understood by the Meiji leaders in their reform programmes.

Nevertheless the combined effect of economic and social forces that Marx describes in his early writings can be still validly applied to Japanese society, because here Marx is concerned with the functioning of power in an industrial society, power which alienates the individual from self, from others, and from power itself. Japan's modernisation, when seen as a joint process of state-making and industrialisation, is also a process of alienation, and the calculated division of society was integral to Japan's modern nation-making, making national unity an inherent problem, and frustrating the Marxist vision of ultimate class convergence.<sup>123</sup> Thus

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<sup>123</sup> A different viewpoint is provided by Robert E. Ward and Dankwart A. Rustow: "Commonly modernization begins under autocracy or oligarchy and proceeds toward some form of mass society—democratic or authoritarian. Under whatever regime, the hallmarks of the modern state are a vastly

Sakai's socialism is his response to various forms of alienation in a rapidly industrialised society. Hence the need to examine more closely key aspects of the new industrial economy and the state's role in sponsoring it as they provoke and energise his thought.

Japan's Industrial Revolution is believed to have started around 1886, when a number of companies were established (*kigyô bakkô*) in the wake of Matsukata Masayoshi's fiscal and monetary policy. The relevant industries gained momentum after the Sino-Japanese War of 1894-95, and the Russo-Japanese War of 1904-05. The revolution was "completed" around 1907, when the technology used in the steel and machine-tool industries had reached global standards and self-sufficiency had been more or less achieved.<sup>124</sup>

Such a description tallies with the commonly-held assessment among economic historians that the development of a capitalist economy in the country had several of the characteristics of "late development" and was thus significantly different from that of Britain. Yet Japan's Industrial Revolution did not cover the

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expanded set of functions and demands. Public services come to include education, social security, and public works while civic duties involve new forms of loyalty [and] tax payment... The tendency, moreover, is for services and obligations to become universal: schooling for all children, a road into every village, conscription for all men, and a tax out of every pay envelope. Hence political modernization clearly has egalitarian tendencies" ("Introduction", in Ward and Rustow (eds.), *Political Modernization in Japan and Turkey*, Princeton, N. J.: Princeton University Press, 1964, p. 5). These "egalitarian tendencies" notwithstanding, I hope to show in the rest of the chapter that Japan's modernisation, industrialisation in particular, created and relied on various social divisions. Ward and Rustow also acknowledge that their definition of modernisation does not necessarily imply democracy or representative government. See *ibid.*, pp. 5-7.

<sup>124</sup> My overall analysis of the pre-war Japanese economy here is based on previous work by Japanese economic historians, including Ôishi Kaichirô (ed.), *Nihon Sangyô Kakumei no Kenkyû* [*A Study of Japan's Industrial Revolution*], 2 vols. (Tokyo: Tokyo Daigaku Shuppankai, 1975). Debate about the timing of Japan's Industrial Revolution depends on the definition of an Industrial Revolution and how to take into account Japan's "peculiarities" as a "late developer". Major theories are provided by: Yamada Moritarô, who asserts that industrial capital was established between 1897 and 1907 based on his analysis of the development of the textile industry and of the steel industry, Furushima Toshio, who asserts that an Industrial Revolution did not take place until much later because most industry that had developed earlier was supported by government and independent industrial activities did not take place yet, and Ôuchi Tsutomu, who asserts that an Industrial Revolution took place from around 1887 to 1889, when machine production was established in the textile industry. Yamada's theory, which was formulated in the 1930s, is now widely accepted and further developed by others, such as Ôishi. Ôishi has moved the start of the Industrial Revolution a decade earlier than Yamada. His justification is that Japan's "late" conditions, such as its economy's prompt linkage with global trade, must be taken into account to determine when the reproduction of capital, a repeated process that encompasses production and sales of commodities, and acquisition of the means of production and labour-power, was established in the country. Thus Ôishi sees the start of the Revolution around 1886, when large-scale cotton mills began to operate commercially, thanks to available capital and the latest technology and machines imported from abroad. See Ôishi, *ibid.*, p. 18. For a more compact

whole society. The farming community, which represented nearly 50 percent of the total workforce during the pre-war period, was left behind, with its total production remaining stagnant.<sup>125</sup> “A class of free labourers”, which Marx saw as a major prerequisite for the accumulation of surplus value and thus for the “emergence of capital”, did not appear on the same scale as in Britain.<sup>126</sup> In Japan’s case, capital had to be created by government.

Pointing out the role of state power in the development of a capitalist economy, Marx cites four distinctive practices in the development of Western capitalism: the establishment of colonies, the national debt (i.e., the system of public credit), the modern tax system, and the system of protection. Marx says: “These methods depend in part on brute force, for instance the colonial system. But they all employ the power of the state, the concentrated and organized force of society, to hasten, as in a hothouse, the process of transformation of the feudal mode of production into the capitalist mode, and to shorten the transition. Force is the midwife of every old society which is pregnant with a new one. It is itself an economic power.”<sup>127</sup>

More recently Perry Anderson has further explored the role of state power in the development of a capitalist economy.<sup>128</sup> Anderson concludes that a major reason why capitalism developed first in Western Europe and nowhere else is the operation of absolutist power. He too sees the exercise of centralised power as a prerequisite for the progress of a capitalist economy at its initial stage.

Thus, at the outset of forming a capitalist economy, Japan resorted to all the classic methods, with the exception of a system of colonies: public credit, taxation,

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explanation of the same theory, see Nagahara Keiji, *Nihon Keizaishi* (Tokyo: Yûhikaku, 1970), 1987 impression, pp. 221-3.

<sup>125</sup> For a useful survey of pre-war Japanese agriculture, see Penelope Francks, “The Features of Japanese Agriculture”, *Technology and Agricultural Development in Pre-war Japan* (New Haven: Yale University Press, 1984), ch. 2.

<sup>126</sup> Marx says: “The historical conditions of its [capital’s] existence are by no means given with the mere circulation of money and commodities. It can spring into life, only when the owner of the means of production and subsistence meets in the market with the free labourer selling his labour-power” (Marx, *Capital*, Volume One, Chapter 6, in Tucker (ed.), *The Marx-Engels Reader*, p. 339).

<sup>127</sup> Marx, “The Genesis of the Industrial Capitalist”, *Capital*, Volume One, Chapter 31, translated by Ben Fowkes (Harmondsworth, Middlesex: Penguin Books, 1976), pp. 915-6.

<sup>128</sup> Perry Anderson, *Lineages of the Absolute State* (London: Verso, 1979, first published by NLB in 1974).



and protection, although colonies would occur later. Out of this combination of methods, the new capitalist economy took shape, and state power solidified.

Without a stable financial base or a currency, the government had still to support industry. Direct taxes were thus crucial to secure national finances, credit was amply used to compensate for a barely workable monetary system<sup>129</sup>, and a flexible accounting system was necessary to meet its priorities. These measures were for practical reasons, and yet they collectively helped to shape state authority.

The stable monetary policy introduced under Matsukata's leadership helped to develop the capitalist economy. Combined with the benefits of the government's various support programmes, a number of companies were established in such industries as railways, spinning, and mining during 1886-89, the period of the first surge of business enterprises. The credit system began to operate, the spinning industry began to receive capital both from silk wholesalers in Yokohama and from local banks and the Bank of Japan in 1887,<sup>130</sup> and capitalist manufacturing was established soon in the spinning industry.<sup>131</sup> In this way Japan's Industrial Revolution got under way.

Although Matsukata's fiscal and monetary policy contributed to the development of the capitalist economy, it was during his regime that a large number of land-less people, including both former samurai and farmers, were created. Matsukata's monetary and fiscal policy is seen as a break from that of his predecessor, Ôkuma Shigenobu, whose strategy was to issue government bonds in order to finance various programmes and encourage industrial growth. However, if we observe their policies as a sequence, their combined effects produced significant

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<sup>129</sup> Government had to rely heavily on loans from *seishô* (wealthy domestic merchants), the issuance of *Dajôkansatsu* (inconvertible paper notes), and loans from foreign merchants in the form of government bonds, to finance its programmes. A representative instance of its reliance on credit was the establishment of *Kawase gaisha* (banks) in 1869. The government provided the investors in those firms, who were wealthy merchants, with *Dajôkansatsu* (inconvertible paper notes) and allowed them to issue currencies, which were convertible. It was not the government but the merchants who were then capable of issuing money (convertible paper notes) because of their reputation. Thus the government used their credit to circulate money. For *Kawase gaisha*, see Nakamura Satoru, "Ryôshusei no Kaitai to Tochikaikau", in *Rekishigaku Kenkyûkai and Nihonshi Kenkyûkai* (eds.), *Kôza Nihon Rekishi 7, Kindai 1* (Tokyo: Tokyo Daigaku Shuppankai, 1985), pp. 130-2.

<sup>130</sup> Yamaguchi Kazuo, *Nihon Keizaishi* (Tokyo: Chikuma Shobô, 1968), p. 127.

<sup>131</sup> Domestic production of cotton thread exceeded imported cotton thread, after which imports gradually declined. Domestic production by manual spinning is also believed to have dropped below 30 percent of the previous level. Based on those statistics, Yamaguchi Kazuo concludes that capitalist

amounts of destitution among the small farmers and within the cities, in effect a proletariat, as well as the simultaneous accumulation of capital.<sup>132</sup> But as yet the new proletariat was without definition or political momentum.

It was the members of low-ranking samurai households who suffered first. In 1876, the government had ended its economic support for the samurai class, with payment of government bonds. Because of inflation, many sold off the bonds, and in 1882 and 1883, only 17.8 percent of all bonds that had been issued for this purpose were held by their original holders.<sup>133</sup> Many samurai became urban labourers, and the bonds went to wealthy merchants and land-owners, and thus became capital.

In this way the strategic use of national debt is one aspect of Japan's "coerced" modernisation, and is closely related to the discretionary nature of the government's fiscal and monetary policy. It was thought necessary and justified in order to allow a government with little fiscal resources to bring in western style manufacturing and to finance various modernisation programmes.

Farmers followed samurai households. In 1873, the year when the land tax reform was introduced, about 27.4 percent of cultivated land was under tenancy. Matsukata's policy was to keep or increase the tax level. With a drastic reduction in the circulation of paper notes, severe deflation set in and prices of agricultural products, including rice, dropped. Many farmers sold their land and became tenant farmers. Tenancy rates continued to grow, and in 1887, the rate rose to 35.9 percent. In 1903, the rate was 43.2 percent, while that in Tohoku was 36.5 percent compared with 14.6 percent 30 years earlier.<sup>134</sup>

Yet the period 1881-1900 when Matsukata presided over monetary and fiscal policy (excluding 92-96 when he was out of office) saw a growth in business

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production was established in the cotton spinning industry around 1890 and 1891. Yamaguchi, *ibid.*, p. 126.

<sup>132</sup> Ôishi Kaichirô sees continuity in policy between Ôkuma and Matsukata. Both had to face financial difficulties due to high inflation and deprivation of gold and silver, the possession of which was necessary to purchase goods from abroad. The former saw the main cause of the problems in the country's trade balances, and the latter in the rampant issuance of currency and he thus took more drastic measures to reduce circulation. Yet Matsukata continued to pursue national priorities, including military spending. Ôishi concludes that the Matsukata policy facilitated the accumulation of capital peculiar to the formation of Japan's "militaristic, semi-feudalistic" capitalism. See Ôishi Kaichirô, "Matsukata Zaisei to Jiyûminken Undôka no Zaiseiron", *Shôgakuronshû*, vol. 30, no. 2, January 1962, pp. 380-442.

<sup>133</sup> Nakamura Satoru, "Ryôshusei no Kaitai to Tochi Kaikaku," p. 152.

<sup>134</sup> *ibid.*, p. 16.

enterprise. The government began to sell off unprofitable operations, including mines and other model factories at a cheap price in 1884, which also helped the emergence of the large business zaibatsu. Accumulation of capital became possible, thanks to these measures. But it was during this same period that farmers' protests against high taxes became fierce.

After the Sino-Japanese War of 1894, large factories were created and Japanese silk began to dominate the U.S. market around 1900. Cotton spinning was another locomotive of Japan's industrialisation. Relying on imported state-of-the-art machines, cheaper imported cottons, cheap labour, and the state credit system, the country became an exporter of cotton yarn in 1897. On the other hand the development of heavy industry in Japan was more challenging than for light industry because of gaps in technology. Thus the role of government was more pronounced than in cotton spinning and silk production, and the sociological and political problems attendant upon the operations of state power were more acutely exposed.

In this regard the Sino-Japanese War of 1894-95 was especially important for it encouraged expansionist nationalism and collaboration between the military and heavy industry through government financing. Enomoto Takeaki, then agricultural and commerce minister, recommended that the government build large-scale steel mills shortly after Japan had acquired an indemnity from China. "The urgent task for the country is to strengthen the foundation of *Fukoku Kyôhei*, and to ensure perpetual management of the national economy through extending national rights externally and developing industry internally. Strengthening military capacity means building warships and munitions, and at the same time extending the railways so that dispatch and distribution of troops and weapons can be improved. Armaments will be more complete if guns and other weapons are domestically manufactured."<sup>135</sup> Here the original emphasis on commerce in the *Fukoku Kyôhei* policy gives way to an emphasis on military expansion. The war and the country's victory produced a powerful creed of nationalism that conflated beliefs in social progress and military might, which even Sakai in his youth was subject to.<sup>136</sup>

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<sup>135</sup> Enomoto Takeaki, "Tekkô Setsuritsu Iken", in Andô Yoshio *et al.* (eds.), *Kindai Nihon Keizaishi Yôran* (Tokyo: Tokyo Daigaku Shuppankai, 1975), p. 68.

<sup>136</sup> Sakai, "Sakai Toshiko den", STZ, vol. 6, pp. 111-2.

This new military-industry alliance had to be furthered by the government, since no private company was financially capable of building the necessary industry. Thus the government decided to build the Yawata Iron and Steel Works, using the indemnity and funds coming from public bonds and taxes. China became an important supplier of iron ore. The drive for colonies, military ambition, and government funding, were now intertwined. This aggregated force was always there to counter solidarity movements.

However, it was not until after the Russo-Japanese War that the military and private capital begun to close ranks to produce weapons. This coincided with the moment when the military established its legal autonomy through the establishment of *gunrei* (direct imperial command for the Army and the Navy).<sup>137</sup> Eventually the military's claim for autonomy, based on its own interpretation of the Constitution, became a serious threat to political unity for civilian governments in the 1930s after disarmament in the 1920s. The fact that some economic historians regard Japan's Industrial Revolution as by then complete underlines the close connection between state authority and heavy industry.

Nonetheless close co-operation between the two did not mean the absence of private initiatives.<sup>138</sup> However, the latter were small compared to those taken by government, and government was deeply involved in the operation of heavy industry as both financier and customer. In addition the persistent cycle of boom and bust made small private companies vulnerable to bankruptcy. Monopoly increased. Within the closed circulation of capital and production, capital had to come from outside.

This siphoning structure, in which the nation's revenue from taxes, the issuance of government bonds and other forms of loan, were diverted to "strategic" areas, continued to be prominent throughout the pre-war period. The pattern, which was largely helped by the government accounting system, was responsible for the

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<sup>137</sup> Some historians claim that in 1907 the military backed by the emperor system was established politically. See Sato Shôichirô, "Kokka Shihon", *Nihon Sangyô Kakumei no Kenkyû*, vol. 1, p. 361.

<sup>138</sup> Private initiatives contributed to the establishment of mechanical manufacturing in heavy industry, one major yardstick for the completion of the Industrial Revolution. Those private initiatives include the establishment of the Ikegai Tekkôjo, which began to produce exportable lathes around 1905, and that of the Nippon Kôkan in 1912, the country's first private steelmaker.

runaway spending after the outbreak of the Sino-Japanese War of 1937, thus eventually causing the national economy as a whole to collapse.

Very evidently the accounting system reveals another example of the operation of discretionary power. Initial and inevitable flexibility in the exercise of government authority was reinforced by new demands for industrialisation, social management and colonial expansion. The Deposit Department, as Sakai reminded his reader in his final pamphlet, epitomises the siphoning structure, in which funds collected from the general public were converted to capital by the means of government bonds and this capital was at the disposal of unaccountable government. Such government monetary and fiscal practices were potentially a breach of the rule of law.

When the government had to spearhead the growth of industry, such discretionary power may have been necessary. However, the progress of a capitalist economy created a new situation in which state power could intervene in the economy more directly. This development would have had a doubled-edged effect, as is observable in the revision of the accounting law in 1921. The Bank of Japan was no longer the treasury of government, and the government now had to write promissory notes when it needed to pay from its deposit just like an ordinary depositor.<sup>139</sup> Yet along with such “progressive” measures, government could now act more like a private capitalist. Thus Article 31 of the new law undermines the principle of open competition in government contracts. It says that if government assumes that open competition is disadvantageous to its interests, it can resort to bidding only among its designated contractors or even can choose a contractor “at its discretion”, except for contracts involving real estate.<sup>140</sup>

Thus, according to Yamamura Katsurô and Katô Mutsuo, the development of a capitalist economy had changed fundamentally the role of government in the country’s economy. Before the capitalist economy took off, government was outside economic activities and promoted industry through various orders. But now government had entered into the economic sphere as an active agent, as buyer and financier. Meanwhile, administrative jobs dealing with industry also increased.

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<sup>139</sup> Yamamoto Katsurô and Katô Mutsuo, “Zaiseihô”, KNKH, vol. 10, 1961, p. 125.

<sup>140</sup> *ibid.*, p. 127.



Accordingly a conspicuous trend during this period is the establishment of many special accounts detached from the general account. These accounts could be used to nurture specific businesses, to run various services, such as telecommunications, and also to deal with urgent welfare programmes, such as pensions, workers' injury insurance, and support for financially troubled farmers. This meant that those programmes were detached from the normal budget, and therefore from any long-term and comprehensive plan that government had to explain to Parliament.<sup>141</sup>

In this way such financial "mobility" spared government from being fully accountable for its spending. Yamamura and Katô point out problems in the account system even after its revision: the government maintained its authority to spend funds outside a Budget as long as it sought Parliament's retrospective permission, and the House of Representatives was no more authoritative than the House of Councillors in debating a Budget, which undermined parliamentary authority as a whole. In fact, various practices that allowed "flexible" spending to continue were intact, such as the continuation of multiple-year spending programmes, the increasing role and volume of supplementary budgets, growing demands for interest payments on government bonds, and more special accounts. These budgetary conditions worked to weaken Parliament's authority and autonomy in deciding a Budget.<sup>142</sup>

When such use of special accounts was combined with the government's ability to print as much money as it required, national spending could become uncontrollable. These conditions were achieved when Japan withdrew from the gold standard in 1931, and more importantly when it changed the Bank of Japan regulations in 1941 so that it could print as much money as the finance minister requested.<sup>143</sup> Flexible monetary policy was initially introduced by a civilian government to boost the ailing economy. However, when the military assumed power, these measures were now aimed at financing war.

Nevertheless, Japanese capitalism was no different from any other forms in terms of its exploitation of workers, particularly of young women. Here Marx's

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<sup>141</sup> *ibid.*, p. 134.

<sup>142</sup> *ibid.*, p. 118.

<sup>143</sup> Yamaguchi Kazuo, *op. cit.*, p. 282, and Nagahara Keiji, *Nihon Keizaishi*, p. 314.

observation that surplus value is accumulated firstly by exploiting surplus labour is applicable. Japanese workers both men and women in the spinning industry had to work on wages much lower than those of even their Indian counterparts.<sup>144</sup> The importance of female workers increased as the spinning industry grew, but various measures were introduced to maximise their labour, not by government but by the employers. Those measures included piece-work, a dormitory system, and recruitment of workers from distant areas.<sup>145</sup> Ôishi Kaichirô asserts that one of the major reasons why workers' class consciousness did not develop was because the major part of the workforce was women and they had to work in a divisive way. Networks for solidarity were very hard to develop. And the government's role here was not to protect the workers but to support business. Such a position was considered necessary within "late development". Thus the government resisted implementing a Factory Law until 1916, and the new law continued to permit a 14-hour workday in silk production and night work in the textile industry.

The state-guided economy also hindered economic activities in general. For instance, the growth of the spinning industry did not stimulate other industries, partly because "efficient" circulation of capital helped by the government did not create enough surplus capital that could go to other industries.<sup>146</sup> This can also be said of heavy industry. Government-supported and military-inclined industry only produced non-machine goods, and did not stimulate other industries. On the other hand, heavy taxes prevented the rise of purchasing power among ordinary people for the creation

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<sup>144</sup> In 1880 the average monthly salary for Japanese male workers in the spinning industry was 4.8 yen and for Japanese female workers 2.32 yen. The yen-converted monthly salary for Indian male workers was 4.5 to 9 yen, and Indian female workers 2.7-4.5 yen. In 1887, Indian workers received 8 to 10 yen, while Japanese male workers received 6.45 yen and female workers 3.9 yen. See Ôishi Kaichirô, "Rôdôryokugun no Kôsei", in Ôishi (ed.), *Nihon Sangyô Kakumei no Kenkyû*, vol. 2, p. 160. In the spinning industry in India, 64 percent of the workforce was men over 20 in 1897. In Japan, 65 percent were women under 20, and women under 14 made up 17 percent of the entire workforce.

<sup>145</sup> See Nishimura Hatsu, "Sangyô Shihon (1): Mengyô", *Nihon Sangyô Kakumei no Kenkyû*, vol. 1, pp. 130-1. The conditions were the same for the overwhelming number of female workers in silk production. See Ishii Kanji, "Sangyô Shihon (2): Kengyô", *ibid.*, pp.186-8. Also see Ôishi, "Rôdôryokugun no Kôsei", *Nihon Sangyô Kakumei no Kenkyû*, vol. 2, pp. 129-83. When Beatrice Webb visited Japan with her husband Sidney in 1911, she was dismayed to see the working conditions at various spinning factories, particularly the common use of dormitories for female workers. They observed that Japan reminded them of Britain 100 or 150 years earlier. Their observation matches that of Marx about British industry in the early nineteenth century. See Miyamoto Moritarô, *Rainichishita Igirisujin* (Tokyo: Bokutakusha, 1988), p. 75.

<sup>146</sup> Nishimura, *op. cit.*, pp. 128-9. The circulation of capital in the industry relied on promissory notes, for which the Bank of Japan was the "ultimate" underwriter. As a result, their circulation depended on the government's fiscal and monetary policy.

of a domestic consumer market. A capitalist economy with strong involvement of the state doubly prohibited the growth of a domestic market. In an economy in which credit backed by government, such as promissory notes and bonds, played a key role in the circulation of capital, state power would be expected to serve as the “ultimate underwriter”, on which people had to rely both materialistically and psychologically.<sup>147</sup>

This close relationship between the state and a capitalist economy worked to consolidate each. A capitalist economy by nature divides society, between capitalists and workers, and within capital. Yet the “anarchy” that capitalism creates enters into people’s lives after it is amplified by government policy. This aggravates social division. Marx is aware of the difficulties in unifying individuals in such a society, and says, “Competition separates individuals from one another, not only the bourgeois but still more the workers, in spite of the fact that it brings them together. Hence it is a long time before these individuals can unite, apart from the fact that for the purposes of this union—if it is not to be merely local—the necessary means, the great industrial cities and cheap and quick communications, have first to be produced by big industry. Hence every organised power standing over against these isolated individuals, who live in relationships daily reproducing this isolation, can only be overcome after long struggle.”<sup>148</sup> Thus when economic power was quickly absorbed into the state through an expansionist ideology, government spending policy, and the general practices of business, communications suffered and solidarity movements were severely disadvantaged. Ill-equipped to comprehend and discuss the new social and economic structures which appeared to be sponsored by government, the people became even more atomised than before, and exposed to the various forms of alienation Marx had described. These developments were inseparable from the many challenges encountered by Japanese socialism: Sakai’s thought is always an application of Marxist concepts to indigenous Japanese conditions.

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<sup>147</sup> Nakamura Masanori explains how capital was circulated in the sale of raw cotton from the Mitsui Bussan trading firm to cotton spinning companies. Companies issued promissory notes to buy cotton. Bussan took the notes to the Mitsui Bank, which then took the notes to the Bank of Japan. “The sales based on credit were only possible because it was supported by the pyramid of institutions for credit circulation with the central bank on top” (Nakamura, “Nihon Burujoajî no Kôsei”, *Nihon Sangyô Kakumei no Kenkyû*, vol. 2, p. 97).

<sup>148</sup> Marx, a footnote, “The German Ideology”, *The Marx-Engels Reader*, p. 186.

Commonly then Japan's industrialisation is characterised by its promptness and "unique partnership between public and private entrepreneurship".<sup>149</sup> However, its benefits notwithstanding, it also created highly unfavourable conditions for solidarity movements. Nevertheless the idea of a "civil society" was most definitely present, as Sakai's career testifies. Undeterred by the extreme solutions of right and left, or by the largely unaccountable policies of government, Sakai continued his quest for a middle way inspired by his commitment to Parliament and the liberal tradition.

In the next section we will examine two social groups with whom he particularly identified, Japanese working women and the rural poor.

### **3.5. Obstacles to egalitarian society: the condition of women and farmers**

For Sakai, socialism means the emancipation of the individual from the material conditions that prevent him from achieving his fullest development. Yet although as a socialist Sakai endorses the "common" ownership of production, socialism is not the ultimate aim for him. He writes in 1904: "The role of socialism is to eliminate classes and to ensure economic freedom for all members of society."<sup>150</sup> That sentiment stayed with him throughout his life. He constantly writes about the relevance of socialism for ordinary people, and he constantly proposes the same creative aim: economic equality. Such egalitarianism, however, was antithetical to the genesis and operation of state authority, to the progress of a "capitalist" economy, to the then general perceptions of national advance, all of which promoted and rested on social divisions. This section will therefore focus on two of those divisions, those involving the status of women and the conditions of farmers, in an attempt to further define some of the key sources of Sakai's commitment to social change.

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<sup>149</sup> Janet Hunter, *The Emergence of Modern Japan: An Introductory History Since 1853* (London: Longman, 1989), p. 113.

<sup>150</sup> Sakai, "Jiyūrenai to Shakaishugi [Free Love and Socialism]", the *Heimin Shimbun*, no. 47, 2 October 1904, STZ, vol. 3, p. 75.

In Sakai's Japan women and farmers were conspicuous for their lagging behind in the general process of industrialisation. For instance, in manufacturing industry, the ratio of men's average wages to women's was 1.7 in 1882. The figure failed to improve during the pre-war period: instead the gap steadily increased to 2.1 in 1930, 2.8 in 1935, and 2.9 in 1939, excepting minor fluctuations.<sup>151</sup> On the other hand, the ratio of male factory workers' wages to male farm workers' was 1.2 in 1882, 1.5 in 1925, 2.1 in 1930, and then went down to 1.4 in 1935.<sup>152</sup>

An obvious reason for these disparities may be found in the development of heavy industry, which employed more male workers and realised more value. Indeed production in the heavy and chemical industries, which began to grow rapidly during World War I, grew in value from 2,450 million yen in 1929 to 4,061 million in 1934.<sup>153</sup> On the other hand production in the textile industry, which employed most female factory workers, remained stagnant, going from 2,998 million yen to 2,918 million yen during the same period. The ratio of agricultural and fishery production to the net national product dropped from 30.2 percent in 1920, to 17.6 percent in 1930 to 18.1 percent in 1935, while the corresponding figures for the mining and manufacturing industries rose from 24.1 percent in 1920 to 30.3 percent in 1935.<sup>154</sup> These statistics clearly signal a structural shift of the Japanese economy from terrestrial sectors (farming, fishing and forestry) to heavy manufacturing in terms of production.

However, the growth in production of heavy industry appears not to be complemented by other statistics of the same period. For instance, it is still the textile industry, including silk production, and cotton spinning and weaving, that earned more yen in foreign trade than any other industry in the pre-war period.<sup>155</sup> Thus in 1929 the textile industry exported goods worth 1,474 million yen, compared with the chemical and heavy industries' 148 million. In 1934 the figures were 1,117 million

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<sup>151</sup> Andô Yoshio *et al.* (eds.), *Kindai Nihon Keizaishi Yôran*, p. 12.

<sup>152</sup> *ibid.*, p. 12.

<sup>153</sup> *ibid.*, p. 119.

<sup>154</sup> *ibid.*, p. 8.

<sup>155</sup> Cotton yarn, cotton textiles, silk and silk cloth still made up 48.1 percent of Japan's total exports in yen value for the period 1930 to 1934, compared with the 1900-4 average of 51.5 percent and the 1915-10 average of 48.2 percent. See, *ibid.*, p. 118.



yen, and 345 million yen.<sup>156</sup> Also in 1929, the number of workers in the textile industry was twice as large as that in the chemical and heavy industries, although the ratio dropped to 1.25 in 1934. Thus the textile industry remained a key industry, and female workers were a major workforce, even during the supposed development of heavy industry.

As for terrestrial production, its decline does not need to correspond to the growth of heavy industry, unless a large workforce shifted from the terrestrial sectors. Indeed, when industry made its first leap during World War I, agricultural and fishing production also jumped. However, when industry grew again in the first half of the 1930s, agriculture and fisheries did not follow. Their production remained stagnant, far below the peak of around 1925. Meanwhile, a large workforce remained within the farming communities: the proportion of the workforce engaged in farming was 51 percent in 1920, 47 percent in 1930, and 42 percent in 1940.<sup>157</sup> Female workers' declining salaries and farmers' declining incomes cannot be discussed in the same vein, yet these statistics reveal problems of income distribution amid supposed "industrial expansion".<sup>158</sup> These divisions characterise Japan's industrialisation and state-making in general. For this reason economists' responses at the time remain highly instructive, especially those of the left.

Thus possible causes for Japan's "uneven" development were long debated by the Japanese Marxists. The most celebrated debate took place between the Kôza-ha and Rônô-ha in the 1920s, when the economy appeared in deep trouble. The economy, which had entered into serious recession after the boom during World War I, worsened in the wake of the Great Kanto Earthquake of 1923. In 1927, the government of Prime Minister Wakatsuki Reijirô was forced to resign after it had failed to stop widespread bankruptcies among the financial institutions. Against this

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<sup>156</sup> Ôishi Kaichirô, *Nihon Shihonshugi no Kôzô to Tenkai [Structure and Evolution of Japanese Capitalism]* (Tokyo: Tokyo Daigaku Shuppankai, 1998), p. 225.

<sup>157</sup> Andô, *op. cit.*, p.6. The figures here have been adjusted in order to focus on the farming population.

<sup>158</sup> For an instructive analysis of the "dual structure" of the pre-war Japanese economy, see Kôzô Yamamura, "The Japanese Economy, 1911-1930: Concentration, Conflicts, and Crises", in Bernard Silberman and H. D. Harootunian (eds.), *Japan in Crisis, Essays on Taisho Democracy*, pp. 299-328. See also Tsuneo Watanabe, "Industrialization, Technological Progress, and Dual Structure", in Lawrence Klein and Kazushi Ohkawa (eds.), *Economic Growth, The Japanese Experience since the Meiji Era* (Illinois: Richard Irwin, 1968), pp. 110-34. Hugh Patrick also points out the problem of income distribution amid a continuous growth in manufacturing and services in the 1920s. See

background, debate centred on the underlying causes, which were clearly structural. Thus the Kôza-ha tended to look to feudalism, backwardness and other “traditional” aspects of Japanese society, while the Rônô-ha emphasised the inherent problems of capitalism.

Their different interpretations of the root causes of the country’s economic problems notwithstanding, the Kôza-ha and Rônô-ha were united in their criticisms of state power, which to them appeared to be a major culprit rather than a mitigator. Thus Yamada Moritarô, a leading economic theorist of Kôza-ha, insisting that state power not based on the common interests of the people is not legitimate differs little from Sakai, when he asserts that state power monopolised by the bourgeoisie is incapable of running a civil society.<sup>159</sup> Both are tackling what appears to be intractable authority operating in the name of the state. Where they differ is in how to describe such power, either as a single entity attributed to “absolutism” or as a more complex expression of the “bourgeoisie”.

Thus, some Kôza-ha historians attributed the genesis of absolutism to indigenous Japanese “traditions”. For them the Restoration was an incomplete revolution with basic feudal elements intact, including landownership and the emperor system. They assumed that Japan had not experienced a “bourgeois revolution” that “aimed at freeing producers from the system of constraints (feudal land property and guild regulations)” as in Britain and France.<sup>160</sup> In Japan the introduction of a capitalist economy did not destroy “feudal absolutism”. Instead it created an amalgamation of feudalism and capitalism, that is, an Absolutist state, which they describe as emerging from “the close alliance between the mercantile capital of the zaibatsu, encouraged by the state, and the feudal forces in the countryside”.<sup>161</sup> The Restoration had ensured “the unification and reinforcement of

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Patrick, “The Economic Muddle in the 1920’s”, in James William Morley (ed.), *Dilemmas of Growth in Prewar Japan* (Princeton, N. J.: Princeton University Press, 1971), p. 216.

<sup>159</sup> Yamada Moritarô, *Nihon Shihonshugi Bunseki* (Tokyo: Iwanami Shoten, 1934), pp. 207-8.

<sup>160</sup> Takahashi Kôhachirô, quoted by Hoston, *Marxism and the Crisis of Development in Prewar Japan*, p. 289.

<sup>161</sup> *ibid.*, p. 289.

feudalistic force in order to contain farmers' revolutionary power".<sup>162</sup> Hence the next revolution must oust the Absolute State.

The Rônô-ha disagreed. For them what may appear a single force of absolutism is in fact a collection of different elements present in the various institutions, such as the Sûmitsuin, the House of Peers, the Army General Staff Office, together with the survival of obsolete practices such as the military's customary privilege of petitioning the emperor directly (*iakujôsô*). According to Inomata Tsunao, a leading economist associated with the school, the proletariat should fight against this "modern absolutism with its various discrete elements".<sup>163</sup> Sakai's own position, as seen in his advocacy of solidarity, is close to such a view.

In order to characterise Japanese absolutism, I have already invoked various forms of the concept of discretionary power, including the legal concept "*taiken*" (the imperial prerogative) as stipulated in the Constitution, the constitutional immunity of the military and the bureaucracy, and irregular spending practices. In the remainder of the chapter, I hope to show, based on Rônô-ha argument with which Sakai was in sympathy, that "strategic social hierarchies" form another principle of Japanese absolutism. For as with discretionary power, these divisions were found necessary for the country to pursue simultaneously national unity and substantive reform, including the introduction of a capitalist economy. However, these hierarchies weakened the political and economic system from within. For they not only created an unequal distribution of income, inviting persistent public criticism, they also prevented genuine national integration. Women and farmers were among the most prominent victims of this absolutist hierarchy.

Perry Anderson has outlined how absolutism was a prerequisite for capitalism in the West: it encouraged the rise of the urban bourgeoisie, and also the primitive accumulation of capital. As a transitional stage from feudalism to capitalism, the period of absolutism witnessed a concurrence of disparate changes, some of which

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<sup>162</sup> Tôyama Shigeki, *Meiji Ishin* (Tokyo: Iwanami Shoten, 2000, initial publication in 1951), pp. 32-3. The Rônô-ha, on the other hand, insisted that the Restoration eliminated the feudal, and Japan became a capitalist state run by the bourgeoisie.

<sup>163</sup> Inomata Tsunao, "Gendai Nihon Burujoajî no Seijitekiichi [The Political Position of the Modern Japanese Bourgeoisie]", *Taiyô*, November 1927, reprinted in *Ôdan Sayokuron to Nihon Jinmin Sensen [The Inclusive Left and the Japanese Popular Front]* (Tokyo: Jiritsu Shobô, 1974), pp. 3-35. The differences between the Rônô-ha and Kôza-ha concerning the definition of Japanese absolutism

were attributable to feudalism and others to a more liberal society. Capitalism, he says, also bears its own assertive logic, which is potentially antagonistic to a rigid hierarchical structure. Its drive for profit is so self-sustaining that it can undermine the absolutist structure. Thus an absolutist period can be described as a period of growing tension between feudal forces and the new, private, commercial sphere.<sup>164</sup>

However it is questionable whether the Meiji leaders had the same apparent intention as those who built the Absolutist state in Europe. Japanese “absolutism” is a relatively fortuitous product. Its roots lie in a peculiar combination of feudalism and the capitalism that the Meiji leaders introduced from the West, partly intentionally and partly unwittingly. It was also a product of their responses to what they saw as immediate social, political and economic problems. What interests us here is the political construct of such expedient absolutism, and its consequences for the disadvantaged.

Nevertheless, Anderson’s presentation of European Absolutism as an indispensable stage before the full operation of capitalism can still provide us with various comparative perspectives. This is not surprising, since the Japanese leaders adopted various key institutions for centralisation which derived from European Absolutism, such as “standing armies, a permanent bureaucracy, national taxation, a codified law, and the beginning of a unified market”. Anderson also notes the contribution made by the revival of Roman Law,<sup>165</sup> which is also relevant to post-Restoration Japan.

And yet this new Japanese state power was by no means absolutist in a European sense, as we have seen in the first chapter. It was indeed “an emergency dictatorship of the new ruling bloc”.<sup>166</sup> Yet none of the three emperors who reigned between the Restoration and the end of World War II was an absolutist ruler in the European definition. Their authority was not only rivalled by the newly created Parliament but they also fell short of the overwhelming private wealth of comparable European monarchs. Hence the genesis of the emperor system in Japan was more ideological than material. However, despite these fundamental differences, state

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become clear if this essay is compared with Noro Eitarô, *Nihon Shihonshugi Hattatsushi* (1930), reprinted in *Noro Eitarô Zenshû*, vol. 1 (Tokyo: Shin’nihon Shuppan, 1994), especially pp. 303-37.

<sup>164</sup> Anderson, *op. cit.*, passim, especially pp. 40-2, 428-31.

<sup>165</sup> *ibid.*, pp. 24-9.

<sup>166</sup> *ibid.*, p. 461.



power as exercised in post-Restoration Japan does have some resemblance to the European Absolutism Anderson defines. For the Absolutist periods tend to see growing tensions between feudal and commercial forces. And in Europe this conflict sponsored new expressions of discretionary power. Accordingly, “the enhancement of private property from below was matched by the increase in public authority from above, embodied in the discretionary power of the royal ruler”.<sup>167</sup> Thus the shift from absolutism to a civil society based on a capitalist economy is often signalled by the elimination (or at least the emasculation) of the royal ruler, after a period of contested power.

In Japan’s case, a similar conflict took place, not because an absolute ruler emerged to secure personal wealth, but because Japan’s state-making required both the centralisation of political power and the introduction of a capitalist economy. The creation of centralised government required a hierarchical system of administration, while the other strands of modernisation, including the introduction of a capitalist economy, necessitated a more fluid society. To preside over the two goals simultaneously, government had to rely on discretionary power, even after the constitutional framework was put in place. In Japan’s case, that power was held not by the royal ruler, but by government.

Centralisation and unity were the crucial aims that the Meiji leaders set out to achieve when they launched their state-making efforts. The very nature of absolutism, the creation of centripetal power, was apparent in this process. The creation of a centralised state without an absolutist ruler involved the selective exploitation and modification of traditions and customs so as to create a new, flexible, hierarchical network. They strove for the creation of that network by creating various hierarchical orders. Thus, as we will see, Max Weber’s “rationalisation of power” in the analysis of the bureaucracy, and Michel Foucault’s “subjectification”, the process by which “a human being turns him- or herself into a subject”<sup>168</sup>, are relevant to Japan’s state-making. Such a process was by no means

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<sup>167</sup> *ibid.*, p. 28.

<sup>168</sup> Michel Foucault, “The Subject and Power”, in Hubert Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (Chicago: University of Chicago Press, 1982), p. 208.



straightforward, as Carol Gluck's work demonstrates. Nevertheless, new and old hierarchies played a key role in the creation of the modern state in Japan.

This combination of strategically installed hierarchies and the exercise of discretionary power were the key mechanisms of government. Thus, as demand for unity grew, the strategic social divisions had to be reinforced. Sakai's socialist critique targeted this process of political and economic "modernisation", which he believed was depriving people of personal autonomy. And this operation of hierarchy made the socialist concept of egalitarianism persistently antithetical to received views of the state and of society as a whole. These contextual forces made the socialism of Sakai and others genuinely combative.

Thus the genesis and evolution of expedient hierarchy is clearly recognisable in the family system and the treatment of private property. At the bottom of these newly intensified divisions were women and farmers.<sup>169</sup> Here inequality was a necessary means to carry out the country's modernisation, for economic development was also accompanied by the calculated reinforcement of existing social arrangements.

Especially relevant to the pre-war family system was the all-inclusive authority of the head of the family. This familial authority was endorsed in the civil code of 1898.<sup>170</sup> The head of the family alone was entitled to inherit family assets, and only the head could decide where the other family members lived and whom they married.<sup>171</sup> The code also deemed the wife as legally incapable of carrying out

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<sup>169</sup> Here I side with the Rônô-ha in emphasising the modern genesis of the plight of the farming community. Although traditional practices must have played a role in determining some social and economic conditions of farmers, such as the relationship between tenants and their landowners, their immediate plight derives from more immediate causes. Also close analysis will reveal that some "feudal" aspects are newly created with the introduction of a capitalist economy. For such an example in the tenant-landowner relationship, see Inomata Tsunao, *Kyûbô no Nôson [Strained Farming Communities]* (Tokyo: Kaizôsha, 1934), pp. 91-2.

<sup>170</sup> Efforts were made to introduce a civil code as early as 1870. The law dealing with assets, drafted by the French jurist Boissonade, and the law dealing with the family, were promulgated in 1890. But fierce opposition forced the government to rewrite the law dealing with the family so that it would comply with "traditions". The property law section of the new civil code—consisting of General Provisions, Rights in Rem and Obligations—was enforced in 1896. The family law section of the code—consisting of Domestic Relations and Inheritance—was enforced in 1898. It is in the latter that the authority of the head of the family was strengthened. This code survived more or less intact until the end of World War II.

<sup>171</sup> Article 749 stipulates that the head of the family can decide where the rest of the family live. Article 750 also says that the head of the family can sanction whom other family members can marry. However, these "privileges" were accompanied by his obligations of protection to the rest of the family.

public duties, such as the management not only of family assets but also her own.<sup>172</sup> In this way the civil code both perpetuated and reinforced inequalities already existing.<sup>173</sup>

Such discrimination may not be unusual. The German civil code on which the Japanese civil code was modelled was also discriminatory.<sup>174</sup> However, the family system that gives the head of family such all-inclusive power is peculiar to Japanese law.<sup>175</sup>

Such inequality within the family is often described as contributing to the weak liberal tradition of Japanese society. For instance, based on the works of Japanese anthropologists and social scientists, Robert Scalapino concludes not only that primogeniture resulted in the creation of the absolute, paternal power of the head of family, but also that such power is at the centre of the system of fixed unilateral rights and duties within the family, as its relationships are governed by Confucian *on-giri* (indebtedness and obligations). In turn such hierarchical relations would not nurture a modern sense of personal responsibility, since people are connected with each other through *on-giri*, not through their own will.<sup>176</sup> His analysis echoes Kôza-ha criticism of the feudal aspects of Japanese society.

There seems to be no denying that traditions associated with the Japanese family tended to circumscribe individual freedom, and therefore were detrimental to

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<sup>172</sup> Article 14 of the civil code stipulates that the wife requires the husband's permission to take actions, which include: to receive loans, become a guarantor, to deal with real estate and movable assets (such as cash, shares, and bonds), and to bring lawsuits.

<sup>173</sup> However, this strategic hierarchy contradicts the Meiji Constitution, which guaranteed "Japanese subjects" various freedoms, including "the liberty of abode and of changing the same within limits of law" (Article 22), "the right of property" (Article 27), and "the liberty of speech, writing, public meetings and associations" (Article 29). "Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military or any other public offices equally" (Article 19).

<sup>174</sup> Rudolf Huebner says: "The Prussian 'Landrecht', it is true, left standing in certain cases a curatorship over adult married women, and a legal adviser for adult unmarried women (II.18, p. 51); but it laid down, nevertheless, the general principle of the equal rights of both sexes, so far as exceptions did not exist by virtue of special statutes or regulations having the force of law (I. 1, p. 24)" (Huebner, *A History of Germanic Private Law*, New York: Augustus M. Kelley, 1968. First edition published in 1908).

<sup>175</sup> For an analysis of the Japanese family system, see Harada Keikichi, *Nihonminpô no Shiteki Sobyô* (Tokyo: Sôbunsha, 1954), especially pp. 135-6.

<sup>176</sup> Scalapino extends the diagnosis to society as a whole, following Kôza-ha structural analysis. Written in 1956, Scalapino's book reflects his time. Thus he says, "The growth and nature of Japanese capitalism was certain to be the determinant factor in the development of liberalism and of the liberal party movement of the new era. The central question was whether Japanese capitalism could create an economy of sufficiency and a philosophy of the liberal creed" (Scalapino, *Democracy and The Party Movement in Prewar Japan*, Berkeley: University of California Press, 1953, p. 93).

the “development of liberalism”. Thus before the Meiji Restoration, a rigid status system was in place. Most people had to engage in work determined by birth. Among samurai families, women’s status was especially subject to the authority of the head of the family. These traditions clearly shaped the installation of the newly endorsed “hierarchical” structures. However, the family system that the civil code came to embody was also affected by many factors contingent on the priorities of the new government. For instance, primogeniture had been by no means the most popular form of inheritance among the commoners, who made up more than 90 percent of the population, at the time of the Meiji Restoration.<sup>177</sup> And Commodore Perry, after his arrival in 1853, observed that farmers’ wives were on a more equal footing with their husbands than the wives of the samurai, because of their full participation in work.<sup>178</sup> Clearly, the institutionalised Meiji family system is a political construct to a significant degree.

Under the new civil code the head of the family did not need to be a man. Yet the traditionally low status of women was now “legally” confirmed by the combination of primogeniture and the wife’s subordinate role (Article 801 assumes that the husband manages the assets of the wife), and by other discriminatory clauses. In effect many women could not own their own property, partly because they were rarely the heads of household, but also because their work opportunities were limited. No financial independence meant subordination was perpetuated, and this subordination was justified by the constraints on the family embodied in the civil code.

Clearly therefore, at a time when globally women’s rights were expanding after World War I, and when domestically some women were gaining political rights, the status of Japanese women as a whole was regressing. This too is a mirror of the evolving relationship between state and society, and of the genesis and evolution of the family system in conjunction with state power.

Hence the creation of a centralised network of administration is a central part of the Meiji leaders’ state-making. The introduction of the register system in 1871,

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<sup>177</sup> Kawashima Takeyoshi and Toshitani Nobuyoshi, “Minpô” (part I), *KNKH*, vol. 5, 1958, pp. 15-6.

<sup>178</sup> Quoted by Kitajima Masamoto, “Kazoku Seido”, *Nihon Kokushijiten*, vol. 3, 1983, p. 334. See also Anne Walthall, “The Life Cycle of Farm Women in Tokugawa Japan”, in Gail Lee Bernstein (ed.), *Recreating Japanese Women, 1600-1945* (Berkeley: University of California Press, 1991), pp. 42-70.

which shaped the modern family system, is a most decisive measure in this direction. It worked as a census, and at the same time introduced the family as the new unit of administration. The heads of family were given special responsibilities for administering the rest of the family. This was necessary for the nascent central government, which could not control the whole population. That role was “delegated” to the heads of families via municipal leaders who were chosen from family heads. This “delegation” was part of the creation of a hierarchical network of political power. Thus the new government anticipated that the chain of orders, from municipal leaders, to family heads, and to individuals would be at the centre of administration, when it introduced the first comprehensive system for local administration, *Sanshinpô* (three new laws), in 1878.<sup>179</sup> Families were linked to administrative local communities, municipalities and prefectures, then to central government. Various new programmes initiated by the government were implemented through this network, such as land tax reform, conscription, new local and national taxes, the educational system, and health programmes. At the same time, the modern concept of the family was disseminated through those programmes via the network. “... [At first] commoners would have had difficulty in accepting the new family system... However, when they were told that the heads of households were exempt from conscription, it taught them the role of the family as the basic unit of reproduction.”<sup>180</sup> State power entered the people’s consciousness when they accepted their new “status” within the system.

Relevant here is Michel Foucault’s emphasis on the inseparability of power from knowledge. For power does not come from “outside”, but is capable of creating knowledge that convinces the individual what should be done. “Power is not caught in the alternative: force or ideology. In fact every point in the exercise of power is at the same time a site of where knowledge is formed... there is no opposition between what is done and what is said.”<sup>181</sup> Thus the exercise of power synchronises with our subjecting ourselves to that power. The dual role that family heads were expected to

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<sup>179</sup> Fukushima Masao, *Nihon Shihonshugi to Ie Seido [Japanese Capitalism and the Family System]* (Tokyo: Tokyo Daigaku Shuppankai, 1967), pp. 182-3. The three laws consist of a law for recognising the traditional villages and towns as formal administrative units, a law for establishing elected prefectural assemblies, and a law dealing with local taxation.

<sup>180</sup> Kumagai Kaisaku, “Kazokuhô”, *KNKH*, vol. 3, 1958, p. 35.

<sup>181</sup> Michel Foucault, “Power and Norm: Notes”, translated by W. Suchting, in Meaghan Morris and Paul Patton (eds.), *Power, Truth, Strategy* (Sydney: Feral Publications, 1979), p. 62.



play demonstrates such “subjectification”, as well as the process by which a hierarchical network of powers was created. For within the network heads of family had to be both subordinate and superior. Thus, as Fukushima Masao points out, the head of the family was “the subject of registry compilation [for the government], and at the same time he would subject other family members to his order. In the latter role, which was linked to the role of municipal leaders, he too would turn himself into a subject.”<sup>182</sup> Thus state power arises “out of society”, when the people begin to identify with the new “imagined” network.

The incapability clauses regarding wives, and the subordinate roles of women in the civil code, are a reflection of this new hierarchical network of administration. For this network to function, the traditionally weak status of women had to be reinforced. Thus the formation of the administrative structure coincides with what Sheldon Garon calls the government’s efforts to isolate women from “politics”.<sup>183</sup> For the government, which was initially indifferent to women’s political activities, now banned women from attending public debate, when it revised the *shūkai jōrei* in 1890.

The basic tenets of this method and ideology had a lasting effect, even as the initial administrative network began to change in response to the evolution of the family. More families were moving to cities, the number of nuclear families grew, and also women began to engage in professional jobs. Thus in 1918, nearly 30 percent of teachers at primary schools across the country were women: women were beginning to assert their own identity away from family.<sup>184</sup>

Social change also encouraged women’s defensive political activities. Already in 1911 (as we have seen) a group of women began to publish their own journal *Seitō* with clear awareness that they were equal with men in their creativity. On 20 April 1922, the Peace Police Law was revised to allow women to participate in political meetings. By then the government had started to revise the civil code. The drafted revision, adopted by the government’s ad hoc council of legal reform in 1925, proposed the elimination of the wife’s incapability clauses and the elimination

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<sup>182</sup> Fukushima Masao, *op. cit.*, p. 183.

<sup>183</sup> Sheldon Garon, “Women’s Groups and the Japanese State: Contending Approaches to Political Integration, 1890-1945”, *Journal of Japanese Studies*, vol. 19, no. 1, 1993, p. 10.

<sup>184</sup> Susan Newell, “Women Primary School Teachers and the State in Interwar Japan”, in Elise K. Tipton (ed.), *Society and the State in Interwar Japan* (London: Routledge, 1997), p. 27.



of the husband's rights to manage his wife's assets.<sup>185</sup> On 17 May 1927, the Supreme Court ruled that it was a violation of the husband's chastity obligation to his wife for him to leave home and enter into a common law marriage with another woman. Also on May 30, female workers at the Tōyō Muslin factory in Kameido, Tokyo won the right to leave their dormitory on holidays, through a strike. On 1 July 1929, the Factory Law was revised to ban night work for women and minors.

At the same time, the family increasingly became an ideological symbol of social order for administrators and "ideologues", when economic and social changes began to break down what they saw as the traditional lifestyle of the family.<sup>186</sup> "The home, the home (*katei katei*), everywhere in the country people are paying attention to it now", commented a magazine article in 1906. "Whether one talks of state or society, the foundation is the home, where social reform must organise." Quoting this Carol Gluck points out that "the argument continued that the 'spirit of love and duty' was the essence of the authentic meaning of family. Indeed, as the absolute patriarchal authority of the household head ebbed, this appeal to sentiment as the wellspring of obedience was heard more frequently."<sup>187</sup> This emphasis on the family coincided with the educators' growing call that women should be "good wives and wise mothers" (*ryōsaikenbo*).

Sakai observed such increasing social and political pressure on women with considerable alarm and sympathy. In his earlier utopian vision, the home was the archetype of communal living, where its members would engage in labour according to their own ability, where profits would be shared evenly, and where care and support would be mutual. He believed that socialism could be better realised if each home anticipated it.<sup>188</sup> At this stage, however, he still assumed that women were "natural" managers of the home and men should work outside it. Yet once again the reading of Marxist classics, including Engels's *The Origin of Family* and August Bebel's *Women and Socialism*, changed the way in which he saw existing social arrangements. He quickly identified *ryōsaikenbo* as the "ideology" of a male-

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<sup>185</sup> For the proposed revision, see Wagatsuma Sakae *et al.* (eds.), *Kyūhōreishū*, pp. 728-30.

<sup>186</sup> See Carol Gluck, *Japan's Modern Myths*, pp. 187-9.

<sup>187</sup> *ibid.*, p. 189.

<sup>188</sup> For Sakai's views of the role of the home in relation to his socialist vision, see Mitani Taichirō, *Taishō Demokurashion: Yoshino Sakuzō no Jidai* (Tokyo: Tokyo Daigaku Shuppankai, 1995), pp. 260-6.

dominant society. So in 1906 he wrote, "It is widely believed that the aim of educating women is to create *ryôsaikenbo*... which is nothing but propaganda for keeping women within the home and perpetuating their 'slave' status."<sup>189</sup> Clearly he was persuaded by his reading to abandon his former views. "Hitherto, every form of society has been based on the antagonism of oppressing and oppressed classes. But in order to oppress a class, certain conditions must be assured to it under which it can, at least, continue its slavish existence."<sup>190</sup> So says *The Communist Manifesto*. Sakai recognises such a mechanism of oppression in the *ryôsaikenbo* campaign.

More essential to his socialist thought, however, was his attachment to the personal freedom that would allow the individual to pursue his legitimate private activities. Thus Sakai says in this same article that human activities transcend both production and reproduction. The division of labour between men and women will remain, but free cultural activities are essential regardless of sex. "Both men and women should be able to engage in higher levels of activity than the quest for food, clothing and shelter according to their own talent."<sup>191</sup> His sympathy towards those who could not control their own lives remained throughout his life, and made him highly sensitive towards any coercive pressure on the individual.

After World War I the government began new attempts to incorporate women even more closely into the network of administration. Thus, as part of the Campaign to Foster National Strength (Minryoku Kanyô Undô), it encouraged wives to form their local associations (*fujinkai*) and to play an active role in the Daily Life Improvement Campaign (Seikatsu Kaizen Undô). So in 1919, Sakai observes the plight of young women "caught between two contradicting trends, the emphasis on maternal responsibilities and femininity on the one hand, and more vocational responsibilities and the need to assert their rights on the other".<sup>192</sup> Sakai clearly sympathises with the women's moves towards greater autonomy, for the family was always at the centre of debate about administration, and women's supposedly subordinate role was thought to be indispensable for this second pillar of social order.

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<sup>189</sup> Sakai, "Ryôsaikenboshugi", *Fujin Zasshi*, vol. 4, no. 2, February 1906, STZ, vol. 2, p. 293.

<sup>190</sup> Marx and Engels, *The Communist Manifesto*, with an introduction and notes by A. J.P. Taylor, Penguin Classics, 1967, p. 93.

<sup>191</sup> *ibid.*, p. 293.

<sup>192</sup> Sakai, "Joshi no Rinri Shisô [Ethics of Girls]", in *Neko no Kubitsuri*, STZ, vol. 5, p. 200.

However, women's subordinate role was not only required for administration but was also exploited economically. It is this combination of state and economic power which exploited the most vulnerable. Hence divisions continued to exist not only between men and women, but increasingly among women.

Thus Sakai criticised Hiratsuka Raichô, a leading writer about women's status, for the latter's emphasis on maternal love and duties.<sup>193</sup> Sakai was not denying motherhood, but was concerned about the possible failure of women's rights movements in connecting to workers' movements generally and to the larger problems of capitalism. "Clearly Ms. Hiratsuka highlights the need for women to protest against a male-dominant society... But she does not mention the relationship between women's protest movements and protest movements of the working class as a whole."<sup>194</sup> For Sakai, without such a link women's movements could not play any fundamental role in bringing about a fairer, freer society. For women's conditions were inevitably linked to the whole capitalist structure, and their full emancipation would not be possible unless the conditions preventing their economic independence were removed.<sup>195</sup>

Sakai was well aware that the nominal "improvements" in women's status coincided with the further falling behind of some women workers. For the impact of legal restrictions and recession were overcome by further exploitation of their cheaper labour. So after night work was banned, the ratio of female workers in the spinning industry increased to 87 percent in 1937 from 78 percent in 1929.<sup>196</sup> And the 1929 Stock Market Crash resulted in sharp salary falls from 1 yen per day in 1929, to 0.81 yen in 1931, and 0.68 yen in 1933.<sup>197</sup> Mechanisation and stricter

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<sup>193</sup> In 1918 debate about motherhood took place between the poet Yosano Akiko and Hiratsuka. While the latter emphasised women's maternal role and called for state protection of motherhood, Yosano insisted on women's economic independence as a prerequisite to the realisation of gender equality. Here Sakai was clearly aware of the debate. For the maternity debate, see Yoneda Sayoko, "Boseishugi no Rekishiteki Igi", in Joseishi Sôgô Kenkyûkai (ed.), *Nihon Joseishi*, vol. 5, *Gendai* (Tokyo: Tokyo Daigaku Shuppankai, 1982), pp. 115-48. See also Barbara Molony, "Equality versus Difference: the Japanese Debate over 'Motherhood Protection' 1915-50", in Janet Hunter (ed.), *Japanese Women Working* (London: Routledge, 1993), pp. 122-48.

<sup>194</sup> Sakai, "Hiratsukashi no Shinpo to Taiho", in Onna no Sekai (2), STZ, vol. 5, p. 327.

<sup>195</sup> For Sakai's emphasis on the need for women's economic independence, see, for instance, "Rôdôteki no Atarashii Onna", in *Neko no Kubitsuri*, STZ, vol. 5, p. 202, and "Kawakamikun o hyôsu", *Yuibutsushikan no Tachibakara*, STZ, vol. 4, p. 423.

<sup>196</sup> Ôshima Eiko, "Ryôtaisenkan no Joshi Rôdô [Interwar Female Labour]", in Joseishi Sôgô Kenkyûkai (ed.), *Nihon Joseishi*, vol. 5, *Gendai*, pp. 10-11.

<sup>197</sup> *ibid.*, p. 11.

quality control measures also worked to cheapen women's labour. This pattern of exploitation is most prominent among those working in silk production, who had to endure worse working conditions than those working in the cotton spinning industry, and whose factories were often located in provincial areas. Those working in large factories in big cities could move to a new factory seeking better pay and working conditions, and participate in labour movements. However, those who worked in small factories in the countryside were isolated.<sup>198</sup> In effect they could not participate in the capitalist system as autonomous actors, but were tied to it as providers of surplus labour.

Furthermore legally reinforced inequality and family poverty made the status of unmarried women especially vulnerable. Sakai repudiated the commonly held prejudice against women "entertainers" who had no choice but to take up any job available in order to support their families. According to Sakai, they were no different from women "reporters, telephone switchboard operators, and teachers who had to work on very low wages". All were both victims and survivors within the new capitalist society.<sup>199</sup>

As Engels points out in his *Origin of Family, Private Property, and State*, from which Sakai understood the structure of women's subordinate status in Japan, the combination of economic structure and state power made those at the bottom of these hierarchies most vulnerable to economic and political exploitation. Thus, women's low wages were concurrent with the emergence of the "dual structure" of the Japanese economy as the result of "rationalisation" and the concentration of capital in the small number of zaibatsu in the late 1920s. Yet the planned revision of the civil code became impossible (perhaps unsurprisingly) when the persistent financial troubles and problems of farming communities began to shake the credibility of government in the late 1920s. Fearing that state authority was being

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<sup>198</sup> For example leading factory owners in the Sawa region, Nagano Prefecture, introduced a registration system for their employees in 1903, aimed at preventing workers from moving to a new place so that the owners could ensure a stable workforce. An employment contract was signed between the employer and the head of the family, normally the worker's father or husband. When the head of the household changed, the contract would become ineffective. Thus some girls were "married" or "divorced" so that they could work at a different factory. Growing public criticism about the treatment of those workers forced the prefectural government to order the employers to terminate the industry-wide agreement in 1929. See *ibid.*, pp. 19-20.

<sup>199</sup> Sakai, "Geisha ga naniyue iyashii", *Shinshakai*, vol. 2, no. 8, April 1916, STZ, vol. 4, p. 206.



eroded, government leaders and “ideologues” once again began to strengthen the family system and the authority of family heads.<sup>200</sup>

Furthermore the nascent women’s movements melted away after the outbreak of the Manchurian Incident, when “national” endurance began to be called for again. The bill intended to give women voting rights at the local level was also abandoned when party politics ended with the assassination of Prime Minister Inukai Tsuyoshi by radical navy officers in 1932.<sup>201</sup> In this way the very evolution of the Japanese absolutist state did not allow for the growth of egalitarianism, and women suffered accordingly. The inherited inequalities of status were encouraged rather than diminished, and radical disadvantage continued. For women in particular the new “improvements” did not bring about any significant legal change, in sharp contrast to the circumstances surrounding the introduction of male universal suffrage, which was prompt given the country’s late creation of Parliament. Women’s status in pre-war Japan is therefore another feature of the absolutism of the Japanese state that tried to nip in the bud the growth of egalitarianism.

A similar pattern can be found in the status of farmers. In both cases, women and farmers were incorporated into the hierarchical structure of administration and also forced to participate in the operation of a “capitalist” system but not as its beneficiaries. In the case of the agricultural sector, the role of government fiscal and monetary policy was crucial. It is his sympathy towards those who were trapped in the system and could not control their own lives that sustained Sakai’s social engagement.

Compared with his analysis of the situation of women, Sakai’s grasp of farming conditions is sketchy. In fact, the petit bourgeois that he envisaged, in his earlier utopian vision, as the social class that would promote socialism did not include farmers.<sup>202</sup> At the same time even at this early stage his humanism responded

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<sup>200</sup> Isono Seiichi, “Minpō Kaisei”, KNKH, vol. 2, 1958, p. 304.

<sup>201</sup> Politicians were clearly aware of the need to engage women in local politics, but not national politics. Thus, the House of Representatives passed a bill that would allow women to take part in local elections in 1930 and 1931. Garon quotes one politician who supported the bill as telling Parliament “cities, towns, and villages are to a certain degree extensions of the household when it comes to, say, schools, sewers, or public toilets”. Thus, women’s limited franchise was acceptable, or even necessary, as long as the basic hierarchical network of administration was intact. See Garon, “Women’s Groups and the Japanese State: Contending Approaches to Political Integration, 1890-1945”, p. 32.

<sup>202</sup> See Mitani, *Taishō Demokurashiron*, p. 266.



to the common deprivation of cultural life among “women busy with rearing children and farmers with growing rice”.<sup>203</sup>

Sakai had to alter his initial neglect of agrarian problems in the light of worsening conditions in the countryside. The plight of the farming communities, responsible for nearly 50 percent of the total workforce, began to receive wide attention in the 1930s, when the price of two major products, silk and rice, plunged after the Crash in 1929, deepening the general indebtedness. These financial difficulties persisted, even while manufacturing was making swift recovery thanks to the devaluation of the yen.<sup>204</sup> Thus “after 1931, Japan’s industrial production and exports recovered perhaps more rapidly than those of any other industrial nation”.<sup>205</sup> But “rural indebtedness, which had been increasing during the 1920s, rose in 1932 to an average of 846 yen per household, a figure roughly equivalent to the annual income of many farmers”.<sup>206</sup> It is this acute and growing disparity that alarmed many Marxist economists. Those hardest hit were the tenant farmers, and how to assess their plight in the context of Japanese capitalism engaged the economists particularly.

The plight of these tenant farmers reveals the problematic concept of landownership that contributed to the formation of “strategic inequality” and “discriminatory” capitalism.

As we have seen in Chapter 2, Japan adopted various concepts that derived from Roman Law, such as that of the legal person and the notion of contracts, to help introduce a capitalist economy. Individuals now could sell and buy land. Yet this move had to be accompanied by the other goal of creating administrative unity. Hence the family law in the civil code, which ensured the dominant role of the head of family, was necessary for the creation of “Japanese subjects”. Financially,

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<sup>203</sup> Sakai, “Fujin no Tenshoku”, in *Sekai Fujin*, no. 1, January 1907, STZ, vol. 3, p. 342.

<sup>204</sup> Cocoon prices on the Yokohama Exchange dropped nearly 47 percent in the spring of 1930 from the previous year’s level. Rice prices plummeted from 30.5 yen per *koku* in August 1930 to 19 yen in October a day after the Agricultural Ministry announced its forecast of a bumper harvest that year. These prices were below the estimated cost of production. The agricultural depression was aggravated by severe crop failures in northern Japan in 1931 and 1934. See Ann Waswo, “Japan’s Rural Economy in Crisis”, in Ian Brown (ed.), *The Economies of Africa and Asia in the Inter-war Depression* (London: Routledge, 1989).

<sup>205</sup> Kaoru Sugihara, “Japan’s Industrial Recovery, 1931-6”, *The Economies of Africa and Asia in the Inter-war Depression*, p. 153.

<sup>206</sup> Waswo, “Japan’s Rural Economy in Crisis”, p. 116.

however, the government now needed to turn to land as the only reliable source of tax revenue. Thus one of the earliest government measures was land tax reform. Farmers' conventional ownership of land was legally recognised, and about 70 percent of the arable land was cultivated by independent farmers as of 1873.

However, those farmers had to pay a fixed rate of tax in cash, regardless of how much profit they made from their crops, so that the government could ensure a stable inflow of revenue.<sup>207</sup> This tax system made the financial base of most farmers extremely fragile. Rice prices would fluctuate violently not only because of unpredictable harvests but also because of government monetary and fiscal policy, as in the case of policies pursued by Finance Minister Matsukata. As a result, their income would also fluctuate,<sup>208</sup> and they were tied to state finances as tax payers by the very fact that their ownership was recognised by the state. Hence the land tax system was a major contradiction within Japanese capitalism. For given the smallness of individual plots the conditions for profitable farming were very slim from the start, and it might almost be said that the tax system destined independent farmers to fail.

In fact, many farmers had to sell their land, unable to pay the taxes. Big landowners faced similar problems, but they could transfer their losses to their tenants. In each case they consolidated their landholdings by buying out plots owned by smaller-scale farmers. Thus tenancy increased to 45 percent in 1908 from 27.4 percent in 1873. Thanks to the economic booms accompanying the Russo-Japanese War and World War I, those landowners invested in stocks, and became capitalists.<sup>209</sup>

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<sup>207</sup> During the Tokugawa period, farmers paid taxes in kind, rice. Although the rate was high, the amount depended on the harvest. After the Restoration, the rate was fixed at 3 percent of the value of land which was calculated beforehand based on government estimation of the harvest. Yamaguchi estimates that farmers had to pay about 34 percent of their profits from their harvests, almost equal to the pre-Restoration level, even when the harvest was normal. See Yamaguchi, *Nihon Keizaishi*, p. 99.

<sup>208</sup> Yamada Moritarô has calculated the fluctuation between 1881 and 1883. During the period, both market and selling prices of rice almost halved. The income of one landlord dropped from 7.19 yen to 2.97 yen. The income of an independent farmer dropped from 9.92 yen to 0.34 yen. The decline was sharper for the independent farmer, because the landlord could transfer the loss to his tenants by raising the rent. See Yamada, *Nihon Shihonshugi Bunseki*, pp. 205-6.

<sup>209</sup> Nakamura Masanori, "Jinushishikin no Unyôkeитай", in Nagahara Keiji, Nakamura *et al* (eds.), *Nihon Jinushisei no Kôsei to Dankai [Formation and Evolution of Japan's Landlordship]* (Tokyo: Tokyo Daigaku Shuppankai, 1972), p. 483.

The nature and genesis of the high rents tenants had to pay to the landowners was intensely debated between the Kôza-ha and Rônô-ha.<sup>210</sup> As Hoston says, their debate reflects the difficulties that Japanese Marxists faced in interpreting the country's economic structure.<sup>211</sup> For it clearly diverged from the capitalism Marx described in his observation of the British economy. As ever the Kôza-ha emphasised the remains of the past, and Noro Eitarô, a leading Kôza-ha economist, noted, "Our country's land taxes, both in their traditional conception and in reality, could not be essentially different from the form of ground rent [i.e. feudal rent]."<sup>212</sup>

From this perspective the tax system remained feudal, because it taxed land, not products. However, the taxpayers themselves were also embedded into a nascent capitalist economy, and this concurrence of "feudalism" and "capitalism" is reflected in the farmer's insecure position as a producer which is characteristic of Japanese capitalism. In these convergences the operations of the "absolutist" state can again be located. Thus Yamada Moritarô recognises the relevant role of state power (*kôryoku*), and describes Japanese capitalism as "a militarist, semi-serf" variant. He also sees "extra-economic coercion" as responsible for the creation of an exploitative system, and cites the government's opposition to any measure to create large-scale farmers.<sup>213</sup>

The legal status of tenants as stipulated in the civil code is clearly another such "politico-juridical apparatus". Here the landownership recognised by the civil code enhanced the rights of the landowner but by the same token weakened the customary cultivation rights of tenants. From now on tenancy became associated not so much with the right to cultivate land, but with the incurrence of debt, for the civil code stipulated that it was the tenants who had to pay land taxes, not the landowners. Also rents continued to be paid in kind (rice), which meant tenants did not have the freedom to decide on the kind of crops to grow or in trading their products. In this way tenancy bore the brunt of the system of national financial burdens.

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<sup>210</sup> For the debate, see Hoston, *op. cit.*, Chapter 8, "The Agrarian Problem: The Dual Economy and the Revolution in the Countryside", pp. 223-50.

<sup>211</sup> *ibid.*, p. 247.

<sup>212</sup> Quoted by Hoston, *ibid.*, p. 212.

<sup>213</sup> Yamada, *op. cit.*, p. 203. Yamada does not give a full explanation of why some government leaders opposed the creation of large-plot farmers, except for saying that such an opinion is typical.

Accordingly, until 1917, land taxes made up the largest source of government revenue, and revealingly the government was slow to introduce tax on interest gained from bonds. It was not until 1920 that the tax law was changed so that such interest became taxable. Nakamura Masanori concludes that this tax system was discriminatory, since it treated favourably those who could invest in bonds (so that capital could be secured to build strategic industry), while keeping land tax intact.<sup>214</sup> In these and other ways agriculture was deliberately neglected under government policy.

Yet not only the tax system but also the whole economic system made the position of farmers insecure. Most small-scale farmers concentrated on the production of only a few items, silk cocoons and rice, and thus they were exposed to the macroeconomy. In the cultivation of cocoons, capital was controlled by wholesalers. Thus in 1934 Inomata Tsunao remarked that “a large number of silkworm producers are exhausted. They are away from the market, and vulnerable to volatility. They cannot compensate for the decline in price by improving quality nor can they turn to new products, because they do not possess enough capital, technology, and expertise to find an alternative.”<sup>215</sup> Based on his field studies in various parts of the country, Inomata likened Japanese villages to colonies because of the way capital circulated.<sup>216</sup> For farmers were incorporated into capitalism as taxpayers and consumers, and yet were also victims of what Inomata calls “an economic boom induced by inflation”. They had no control over either the circulation of commodities or of capital. This lop-sided economic system also began to hit landowners, when the farm prices plunged, which were already low, after the Crash in 1929. Many landowners also went under. The government could no longer ignore the farm problems, and introduced measures to control price fluctuation and also public works projects. However, the situation was so intractable that Inomata found such measures ineffectual.

As a result, the way in which capitalism was nurtured in general did not produce independent producers and consumers, and a self-sustaining domestic

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<sup>214</sup> Nakamura, “Jinushisei no Chōraku”, *Jinushisei no Kōsei to Dankai*, p. 536.

<sup>215</sup> Inomata, *Kyūbō no Nōson*, p. 39.

<sup>216</sup> *ibid.*, pp. 114-5.

market. The self-sustaining process of capitalism that Marx described, in which capital is returned to producers so that they can continue production, did not emerge. Instead, there flourished the prompt formation of monopoly and the separation between large capital and small companies. And large capital began to link up with the military in the 1930s, since the latter was the only provider of capital at a time of recession. This growing collusion between large capital and the military coincided with the growing gap between agricultural production and industrial production. The plight of the agricultural sector increased. When manufacturing production increased sharply during World War I, agricultural production also increased. But when manufacturing production sharply increased again during the 1930s, agricultural production no longer did so. In fact, it dropped sharply away from its previous performance.<sup>217</sup>

Despite such negative conditions, both farmers and women began to assert their rights in the late 1920s and early 1930s. In both cases, Sakai's role was that of dissident and defender, who understood not only their political and economic disadvantages but also their need for freedom and knowledge.

The 60-point platform of the Taishûtô, which Sakai endorsed, includes full gender equality, encompassing law, political rights, and social customs, and also measures to help working mothers, such as free nursery care. These ideas were originally propagated by Marxist women, such as Yamakawa Kikue, who in 1925 advocated the abolition of discriminatory clauses in the civil code against women (including the regulations defining the rights of family heads and the "incapability" clauses). Yet most Marxists were indifferent to these demands, since they assumed that gender consciousness was a matter for the bourgeoisie and was thus a hindrance to class struggle. Accordingly Inumaru Giichi sees in their attitude "an odd mixture of dogmatic adherence to class struggle and prejudice".<sup>218</sup> Sakai, however, was one of the very few Marxists who saw women's issues as an essential part of the solidarity movement, and for him sexual equality and individual need were

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<sup>217</sup> Andô, *op. cit.*, p. 8. In the late 1930s agricultural production also showed a temporary increase thanks to price rises due to high inflation (Yamaguchi, *op. cit.*, p. 273). However it dropped sharply towards the end of World War II (see tables of production shifts, Nagahara, *Nihon Keizaishi*, p. 325).

<sup>218</sup> Inumaru Giichi, "Nihon ni okeru Marukusushugi Fujinron no Ayumi", in Joseishi Sôgô Kenkyûkai (ed.), *Nihon Joseishi*, vol. 5, *Gendai*, pp. 162-3.



indispensable components of socialism. Understanding that free decision-making activities are essential to human existence, he was able to transcend narrow social divisions and connect to a wide range of “the under privileged”.

However, in contrast to his attention to women’s issues, Sakai wrote few articles exclusively about farmers. Rather he tended to conflate their condition with that of other kinds of workers in the proletariat. For him, poor farmers were no different from factory workers, in that both were exploited by capital. Although such a position may seem unsophisticated compared to that of many Kôza-ha economists, Sakai understood the plight of the farmers as that of persons trapped in a system which made it impossible to control the terms of the individual life. Sakai understood very well the attendant need for autonomy, and it is in this context that he helped to run a farmers’ “school” in his hometown at the very end of his career.

The school was established by local supporters of farmers’ movements at the peak of the proletarian solidarity movement: Sakai’s efforts to bring together various proletarian groups into a single party had been partially realised with the establishment of the Taishûtô in July 1931. At this time the residents of Toyotsu, northern Kyushu, who were politically close to Sakai, began to organise a series of public lectures known as the Sakai Toshihiko Nômin Rôdô Gakkô (Sakai Toshihiko Farmers-Labour School). The “school” was one of many similar groups then established, designed to promote learning outside the formal educational system for workers and farmers. The first two-week term was held in February 1931 in three six-mat rooms above a rice-polishing factory owned by one of the group’s supporters. There were more than 100 “students,” including graduates of middle school (the local elite), ordinary citizens, miners from the neighbouring Chikuhô mines, and small-scale independent farmers. One fifth were “very poor tenant farmers from *burakumin* communities”. The school offered a meeting place for “people who lived so closely but had never had a chance of communicating with each other”.<sup>219</sup> Sakai gave a lecture about socialism and the socialist movement in

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<sup>219</sup> Koshôji Toshiyasu, “Sakai Toshihiko Nômin Rôdô Gakkô”, *Shikôbunrin*, vol. 39, March 1991, pp. 11-12.

Japan each night before returning to Tokyo a week later. Most of his lectures, however, were interrupted or suspended by policemen present in the meetings.<sup>220</sup>

Nevertheless, the public mood began to change. After the Manchurian Incident, various local associations began to organise public meetings to support the government's expansion policy, such as the Reservists Association, the patriotic women's associations "*fujinkai*", and some local newspapers and municipal governments. In Toyotsu, a public campaign began for seeking reduction of the sentence of one of the accused in the May 15<sup>th</sup> Incident, who happened to have been born in the town. In 1934 also, a number of communists publicly announced their "recantation". Sakai, who participated in the first two terms of the school named for him, passed away in January 1933. When the school held its fourth and last term in September of that year, it attracted only 12 students. The Zenkoku Nômin Kumiai, which gave ideological and strategic support to local farmers, was also disbanded following increasing government opposition to "social" movements after the outbreak of the Sino-Japanese War in 1937. These developments were symptomatic. Thus it was not the direct impact of the country's economic difficulties but changes in government policy, and the related change in public mood, that eventually terminated spontaneous movements among farmers and workers. In a country at war, or on the brink of it, such domestic "discord" was no longer acceptable.

All in all Sakai's socialism was founded not just on a belief in equality but on an international vision. His egalitarianism respects individual aspiration and freedom, but his confidence in humanity addresses a broader public that transcends the nation-state. This outlook helps to give his thought consistency despite his sometime crude application of Marx's dichotomy between bourgeoisie and proletariat. Sakai's emphasis on personal freedom could never be made to sit comfortably with any political dogma. So in his thought, as with the other two subjects of this study, the early Meiji emphasis on personal freedom clearly survived. Hence the platform of

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<sup>220</sup> *ibid.*, p. 12. A similar initiative was taken by female workers in silk production factories in Nagano Prefecture, who took part in gatherings organised by a local branch of the Zenkoku Nômin Kumiai [National Federation of Farmers Co-operatives] in January 1931. The local economy was in tatters after sharp drops the preceding years in the prices of the two main products, silkworm cocoons and rice. Some workers had been fired or remained unpaid. The get-together meetings were held in a village called Besshomura for those workers who had returned from the factories for a winter break. Of 73 such workers, 23 participated. The meetings gave them new confidence with better

Taishûtô (with which he clearly identified) provides a comprehensive, social democratic vision of a civil society, despite the limits of Japanese society at that particular moment. It enshrines Sakai's characteristic search for a balance between individual rights and the common good, and the still-relevant insights into the future of a pioneer of modern Japanese social thought.<sup>221</sup>

Through Sakai's egalitarian vision the various shortcomings of strategic hierarchy were exposed and implicitly assessed. As with the operations of discretionary power, such hierarchies weakened the system from within. In his work the failure to improve the rights of women and tenants was subjected to a moral alternative designed to reveal the nation's failings in creating a viable self-sustaining social and economic system.

Japanese experience shows that a successful society requires a mechanism that allows its members to make their own rules and to modify them according to their needs and circumstances. This capacity for self-renewal requires a process by which consensus can be created. For this process to function properly, the recognition of a fundamental equality is essential, as well as freedom of speech, since consensus will emerge only through negotiation between notions of individual freedom and the public good. The absence of a suitable mechanism in modern Japan derives not only from the weak juridical system and the operation of discretionary power, but also from strategic inequality. In the following and last chapter before I conclude this study, I will discuss this problematic process of decision-making, and the equally problematic concept of *min'i* (popular will), through a consideration of the thought and career of Saitô Takao.

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understanding of their situation. Thus they learned that the unpaid salary was not their fault but the result of the recession, and that they were not alone in this respect. See Ôshima, *op. cit.*, p. 34.

<sup>221</sup> The leading Marxist historian Tôyama Shigeki says that objective study of post-Restoration history was started by Sakai (Tôyama, *op. cit.*, p. 7). Inumaru Giichi also says that the study of women's issues based on Marxism was initiated by Sakai (Inumaru, *op. cit.*, p. 151). Kawaguchi, a Marxist economist and a biographer of Sakai, also calls him "the source of Japanese Marxism" (Kawaguchi, *Sakai Toshihiko no Shôgai*, vol. 1, p. 16).

## Chapter 4

# Saitô Takao: Party Politics, Regimentation, and Resistance

As my final study in the politics of dissent, I will examine the thought of Saitô Takao in terms of an active, pre-war politician's attempts to confront the exercise of governmental power. Saitô was a conservative politician who criticised government war policy, and who, in an incident which coincided with the "voluntary" disbandment of all political parties, was expelled from Parliament in 1940. Saitô was neither an anti-war pacifist nor a socialist sympathiser, but his criticism of government policy derives from his sceptical rationalism and his adherence to ideas of liberty, which he inherited from the Meiji Enlightenment. However, when seen against the background of the growing support both for the drastic reform of the domestic political system (an end to proper parliamentary politics) and for a new Asian order (under Japan's hegemony), such an individualistic liberal position as Saitô's articulated a plea for a more rational policy.

In dealing with the lives of politicians we are inevitably involved with methodological problems, for they act within a complex dynamic of power, based on calculation and expediency. Saitô is no exception. However, there is no denying that Saitô defended the principles of constitutional and representative government throughout his life, as Minobe did. In this sense, Saitô, along with Minobe and Sakai, provides (to use a phrase of Raymond Williams) "indicative features" of what the Japanese hegemonic process "has in practice had to work to control"<sup>1</sup>. But unlike the other two, Saitô made his points more publicly and on immediate and particular issues as a member of the House of Representatives. In Saitô's case, therefore, the tension between national goals and free government was more publicly manifested. Nevertheless Saitô was a relatively minor politician whose professional pinnacle was to become head of the Cabinet Legislation Bureau in 1931. At the same time he took his parliamentary duties

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<sup>1</sup> Raymond Williams, *Marxism and Literature*, p. 113.

seriously, and even if he is now remembered chiefly for his parliamentary speech of 1940, I propose to focus my inquiry on his political philosophy observable in his public speeches, memoirs, and published writings, paying attention to the relevant political circumstances.

In this chapter I will be concerned with party politics and the role of Parliament between 1910 and 1940, a period when party politics gained momentum and then was sidelined by the military bureaucracy (this period coincides with Saitô's political career before his expulsion). Carol Gluck finds that after the 1880s Japanese government was "the most deliberate agent of the devaluation of politics".<sup>2</sup> Nevertheless, party politics and opposition parties most definitely emerged. Hence I will discuss why at this time institutional politics became an enemy of government, why despite that opposition parties were born, and why they failed to lead social and liberal movements. These questions are also related to the ambiguous character of the pre-war Parliament as a representative organ of the body politic. The concept of liberty will be also examined to further clarify Saitô's position. I hope to answer questions about the origin of Saitô's pragmatic political realism, and why his views were able to expose the problems of government of the time.

#### **4.1. Introduction: biography and intellectual formation**

Saitô Takao was born in 1870 as the last of six children of a small village farmer in Hyôgo Prefecture.<sup>3</sup> The family owned a small plot of land, but the soil was poor, and the climate harsh. Customarily many men in the region would go to the cities for work

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<sup>2</sup> Carol Gluck, *Japan's Modern Myths*, p. 239.

<sup>3</sup> The biographical information provided in this section is based on the following: Saitô Takao, *Kaiko 70-nen* (Tokyo: Chûô Kôronsha, 1987), Kusayanagi Daizô, *Saitô Takao kaku tatakaeri* (Tokyo: Bungei Shunjû, 1981), Matsumoto Ken'ichi, *Hyôden Saitô Takao* (Tokyo: Tôyôkeizai Shinpôsha, 2002), and Earl H. Kinmonth, "The Mouse that Roared: Saitô Takao", *Journal of Japanese Studies*, vol. 25, no. 2, 1999, pp. 331-60. Kinmonth's is the only essay in English exclusively on Saitô and his speech of 1940.



during the winter. Yet given the economic conditions of the region, the family was relatively well off.

Saitô seems to have had a happy and carefree childhood. Strong-willed and restless, he entered a local primary school at the age of 8. At 12, he decided to study at a school run by Buddhist monks in Kyoto, about 120 kilometers away, when he heard one of his classmates planned to go there. Soon bored, he returned home in a year. An attempt to learn the Chinese classics with a local teacher also did not last. Meanwhile, his hatred of the idea of becoming a farmer continued to grow, and while helping with the family farm, he began to plot his future away from the village.

Thus at the age of 16, he left home for Kyoto without telling anyone. He lived precariously, delivering box lunches to police stations and helping in a bakery. Yet with no possibility of receiving further education in the city, he returned to the village three months later. Still dissatisfied, he continued to long for the life of the city and a non-manual occupation.

As we have seen, Maruyama Masao cites the strong desire for social ascendancy of post-Restoration Japanese youth.<sup>4</sup> Saitô too was driven by restlessness in a society conducive to social mobility. After farming for three years, he decided to go to Tokyo in 1889 at the age of 20. To save cash, he walked all the way to Tokyo. Train services then partially connected Tokyo and Osaka, and horse carriages and *jinrikisha* services were also available. Late in his life Saitô recalls that it would have taken him just five or six days to get to Tokyo if he had used conventional transport. Instead the journey took him 18 days. On his way he was robbed, but he also remembers the generosity of strangers, such as a toll-bridge attendant who did not charge him and an employee of a ward office in Tokyo who found him a job. Forty-five years later Saitô, then a vice home affairs minister, was driven in a government car on an inspection visit parallel to his old route. Tokyo and Osaka, the country's two largest cities, had long been linked entirely, and observing the new roads and bridges, Saitô connects his own rise from penny-less

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<sup>4</sup> Maruyama Masao, *Nihon no Shisô*, p. 34.

traveller to a member of the House of Representatives with the country's transformation to modernity.<sup>5</sup>

In Tokyo, Saitô became a *shosei* (live-in student helper) at the house of a bureaucrat who came from the same county as he, taking a typical route to further education for ambitious but poor young men. In 1891, he entered the Waseda Senmon Gakkô, a school for advanced study, which later became Waseda University. The school was founded by Ôkuma Shigenobu in 1882, a year after his dismissal from government. The decision to enter Waseda was decisive for his political affiliation, as in his career he would always side with a party which had personal and historical ties with the Rikken Kaishintô founded by Ôkuma in the same year. Saitô had to spend every weekend visiting his acquaintances to collect money to cover his fees and living expenses. Yet in 1894, he graduated from the school, and took the annual bar examination for future judges and prosecutors. He failed, but in the following year, he sat for an examination for lawyers and became one of 33 successful candidates from more than 1,500 applicants.

Saitô then became a trainee lawyer at the office of Hatoyama Kazuo, soon to be prominent in politics. In 1898, Saitô set up his own office after Hatoyama joined the Ôkuma Cabinet as vice foreign minister. Compared to judges and prosecutors, who were employed by the government, the status of lawyers, as "*min*" (private) professionals, was then low. Saitô again became restless, and assumed that chances for further social advancement and a more challenging career would be limited for graduates of a private school like himself. He decided to study abroad, and in 1901, following Hatoyama's footsteps, he entered Yale University's law department. His tuberculosis worsened, and he returned home in 1904, without finishing his degree.

Nevertheless, his two-and-half-year stay in the United States provided him with crucial formative experience. Relatively free from the nationalistic sentiments to which many of his fellow countrymen succumbed after encountering racial discrimination, Saitô witnessed at first-hand how the American legal system functioned on a daily basis.

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<sup>5</sup> Saitô, *Kaiko 70-nen*, pp. 108-9.

With support from one of his teachers at Yale who happened to be a judge of the state supreme court, he sued the hospital which had operated on him for insufficient care.<sup>6</sup>

In 1905 Saitô married, and he began to aspire to become a politician. His political career began in earnest in 1912 when he was elected to Parliament for the first time, at precisely the time of the rise of parties. He won his seat as a candidate of Kokumintô, an offshoot party of Ôkuma's Kaishintô. He joined the newly formed Dôshikai in 1913, and when the party merged with other smaller parties to become Kenseikai in 1916, he joined the new party. In 1920, Saitô lost his seat in the first general election held under single-seat constituencies since 1900. He was reelected in 1924, and his party, Kenseikai, became the ruling party from 1924-27. Kenseikai merged with another non-Seiyûkai party Seiyû Hontô in 1927 to become Minseitô. Saitô belonged to Minseitô until 1940, when he was expelled from Parliament by a majority vote, which included votes by members of his own party.

The years between 1927 and 1932 are widely regarded as a period when a normal two-party system functioned in Japan, in which Seiyûkai and Minseitô took power alternately. This brief period is also characterised by a drastic oscillation in Japan's foreign policy between expansionism and international co-operation. Thus in 1927 the Seiyûkai government led by the Army general Tanaka Giichi sent troops to Shandong to support the Manchurian warlord Zhang Zuolin, who was fighting against the Army of the Chinese Nationalist Party led by Chiang Kai-shek. As Chiang appeared to be succeeding in unifying China, Japanese political leaders began to differ in their sense of the national interest. The sense of crisis over the possible loss of influence in China, particularly in Manchuria, was acute among military personnel, while civilian elements of government sought international co-operation. Thus the Minseitô government led by Prime Minister Hamaguchi Osachi signed the London Naval Limitation Treaty despite strong criticism of the Navy in 1930.

Generally Seiyûkai was the party of expansion, while Minseitô advocated international co-operation. Yet the conflict between the two policies reflects the persistent battle between the military and civilian government, whichever party was in

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<sup>6</sup> Matsumoto Ken'ichi, *Hyôden Saitô Takao*, p. 79.

power. At the same time the military was by no means monolithic. However, as an organisation with its own internal hierarchy, agendas and crucial autonomy, the military as a whole was able to impose a kind of a “second” state, which tended to undermine the forms of constitutional government, including Parliament, as Saitô pointed out in some of his parliamentary speeches. In fact the assassination of Prime Minister Inukai Tsuyoshi in 1932, which followed the Manchurian Incident, marked the end of parliamentary control of policy.

Saitô’s own career echoes this battle between the military and civilian government. While Minseitô was in power from 1929-31, Saitô was a vice home affairs minister, assuming his first “bureaucratic” post. In November he was appointed head of the Cabinet Legislation Bureau, a key office responsible for drafting laws, and whose 13 official advisors included Minobe Tatsukichi.<sup>7</sup> However, Saitô had barely been in office for a month, when the Minseitô government headed by Prime Minister Wakatsuki Reijirô was forced to step down, unable to stop the escalating military confrontation in China after the outbreak of the Manchurian Incident.

Minseitô then supported the Cabinet led by Admiral Saitô Makoto, a national unity cabinet created after the assassination of Inukai, which aimed to restore constitutional government. Saitô was again a vice home affairs minister. Yet the battle between the military and parliamentarians continued both within and outside government. Thus when the Saitô Cabinet collapsed in 1934, Saitô again lost his post and resumed his role as an opponent of government.

In his lifetime Saitô repeatedly spoke in Parliament criticising government policy and defending party politics. His life-long stance reached its climax when he delivered his 1940 speech criticising the government’s China policy. The speech was made with urgency, against the background of the outbreak of World War II on the European front and Japan’s worsening relationship with the United States, which had just informed Japan of its intended termination of the bilateral commerce treaty.

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<sup>7</sup> Ômori Masanori *et al.*, *Naikaku Hôseikyoku 100-nenshi* (Tokyo: Naikaku Hôseikyoku, 1985), p. 486. Minobe held the post from 1911-34 (*ibid.*, p. 16).

Two and a half years after the outbreak of the Sino-Japanese War, Saitô's confrontation with the government, now led by Navy Admiral Yonai Mitsumasa, was remorseless. He criticised the government's haphazard pursuit of the war and its "holy war" propaganda to justify an increasingly incomprehensible conflict. The war, which had begun on 7 July 1937, with a clash between Japanese and Chinese troops on the outskirts of Beijing, dragged on with no end in sight. The Japanese government's attitude towards the war was highly inconsistent as is demonstrated by a sequence of policy statements issued by the then Prime Minister Konoe Fumimaro (1891–1945) in 1938. First after German mediation for a peace settlement failed, the government made a belligerent demand in January to the Chinese Nationalist Government led by Chiang Kai-shek to recognise Manchukuo as an independent state. When the demand was rejected, the government issued a non-recognition statement of the Nationalist Government in less than a week. Then on 3 November, the government revamped its war effort, declaring that the aim of the war was to create a New Asian Order eliminating Western imperial powers from Asia. Yet this statement was followed the following month by a reconciliatory statement emphasising "neighbouring amity, common defence against communism and economic co-operation" between Japan, Manchukuo and China. The last statement reflected Wang Ching-wei's defection from Chiang's Nationalist Government earlier in the month and the Japanese government's ambition that Wang might establish a pro-Japanese regime replacing Chiang. Saitô questioned the soundness of the judgement to support Wang. Given the growing anti-Japanese sentiments in China, Saitô asserted that Wang was unlikely to succeed in unifying China, as the government claimed. For Saitô, what emerges through these statements is a flawed war policy based on wishful-thinking.

Thus Saitô's one and half hour speech reflects his frustration over a policy which he saw as lacking in both substance and credibility. His persistent references to the "law of the jungle" (*yûshô-reppai*, *tekisha-seizon*) were meant to remind his listeners that any plan that omits objective assessments of power relations is destined to fail. Saitô criticises Konoe's "New Asian Order" as "vague and incomprehensible". He sees this vagueness both as a symptom of political malaise and as a strategy to override critical



debate. Saitô here is less opposing war than expressing his instinctive fear that a policy that required such incomplete rhetoric, and which had already resulted in a sequence of inconsistent actions, was simply unachievable. More importantly, behind the inconsistency and flawed rhetoric, he saw the presence of forces within the military determined to take the country into further aggression at any cost.

In retrospect, Saitô's diagnosis of the war was well-founded and close to that now provided by many historians of our time. Thus Iriye Akira speculates that Konoe's confused way of handling Japan's confrontation with China was largely responsible for the country's eventual entry into the Pacific War. The New Asian Order declaration of 1938 was Japan's "formal rejection of the Washington system" and "the bridge of no return".<sup>8</sup> Yet Saitô's view was undoubtedly that of a minority and had no effect on government policy. In this sense, his stance was that of isolated dissent ignored in a political world increasingly bent on military aggression and encouraged by calls for national unity. And in terms of the political developments that followed, Saitô's speech merely facilitated the disbandment of all political parties in Parliament and gave further momentum to military aggression. Saitô was expelled from Parliament by his fellow members a month later. But his career did not end there, and it testifies to continuing grass-roots defiance of government orthodoxy. Saitô received nearly 600 letters and postcards from the public shortly after the speech, most of which were overwhelmingly sympathetic to his position<sup>9</sup>, despite the fact that the government deleted two-thirds of the speech from the official transcript. And in 1942, his rural constituency elected him back to Parliament. In 1946, Saitô joined the first Cabinet to be formed after the first post-war general election by Prime Minister Yoshida Shigeru as a state minister. He retired from politics in 1948, and died a year later at the age of 80.

As a subject of academic inquiry, Saitô remains a neglected figure. Ito Takashi attributes this neglect to two main reasons. One is that access to primary sources is

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<sup>8</sup> Akira Iriye, *The Origins of the Second World War in Asia and the Pacific* (London: Longman, 1987), p. 68.

<sup>9</sup> For an analysis of the public response to Saitô's speech, see Kawahara Hiroshi, "Saitô Takao no Hangun Enzetsu to sono Hankyô", *Shakai Kagaku Tôkyû*, vol. 27, no. 1, 1981, pp. 37-74, and also Earl H. Kinmonth, "The Mouse that Roared: Saitô Takao", pp. 343-6.

relatively difficult.<sup>10</sup> The other more important reason is the prevailing uncertainty among historians as to how to define Saitô's position. Although Saitô is seen as a liberal critic of the military bureaucracy in the 1930s, his speeches also project an image of a "conservative" critical of "reformers", a bourgeois politician indifferent to the plight of ordinary workers,<sup>11</sup> and a passionate patriot and imperial loyalist who despised the naivety of pacifism<sup>12</sup>. How to integrate these various images remains a challenge for historians, according to Itô.<sup>13</sup>

Earl Kinmonth on the other hand attributes the neglect of Saitô and his parliamentary speech of 1940 to inadequate assessment of Japan's military expansion. He criticises Ienaga Saburô and Maruyama Masao, "two of Japan's best-known academics", for dubious and indiscriminating characterisation of Japanese fascism. In his view they pay scant attention to Saitô's presence or the speech, because the relative freedom that the parliamentarians clearly enjoyed, as evidenced in Saitô's delivery of the speech, and also the public support that he received afterwards, did not fit their characterisation of Japanese fascism as a matter of state repression and popular obedience. For Kinmonth, the prime motor of Japan's expansion policy was the civilian and military elite, because such state enterprise provided them with better opportunities to demonstrate their talents, better job prospects, and better salaries.<sup>14</sup> Saitô is therefore a test case for any revision of prevailing assessments of Japanese fascism.

However, Ienaga's and Maruyama's assessments of certain trends or social mores are, I think, still valid, albeit subject to modification, because such approaches allow us to define an overview. While Kinmonth is interested in specific contemporary forces responsible for Japanese fascism, the academics he challenges attempted to

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<sup>10</sup> Saitô published 10 books in his lifetime, some of them privately. But most are not easily available, except in a few selected libraries. The diary, which he kept from 1906 until his death in 1949, has not yet been made public, with a few exceptions.

<sup>11</sup> Banno Junji, *Democracy in Pre-War Japan, Concepts of Government, 1871-1937: Collected Essays*, pp. 150-60.

<sup>12</sup> Matsumoto Ken'ichi, *op. cit.*, p. 405.

<sup>13</sup> Itô Takashi, "Kaisetsu", in Saitô Takao, *Kaiko 70-nen*, p. 308.

<sup>14</sup> "Examining the background to Saitô's concern about those losing their livelihood because of the war in China shows that while these years were a 'dark valley' for Japan's petty bourgeoisie, they were a period of expanding opportunity and influence for its new middle class and especially for the intelligentsia" (Earl H. Kinmonth, "The Mouse that Roared: Saitô Takao", p. 360).

identify certain modes of behaviour that facilitated it. Their assessments and Saitô's arguments complement each other, as I hope to show. Also I find it difficult to assume that Saitô's presence alone can overturn such cultural assessments. Saitô's intervention was in fact subtler than Kinmonth implies, and it allows us to examine the overview provided by Ienaga, Maruyama and others from a different angle. The challenge is how to integrate the presence of non-conforming individuals such as Saitô into a general picture.

Thus Kusayanagi Daizô, Saitô's biographer, characterises Saitô as a "*seironka*" (common-sense critic).<sup>15</sup> By *seironka*, Kusayanagi means that Saitô was a "mirror", reflecting in his criticism the problems of governmental decision. He was a representative of parliamentary resistance, and he clearly played that role intentionally. My own interest in Saitô is as a dissenting voice, one which allows us to link historical events into a coherent picture, and to understand more clearly how hegemonic power operated.

Saitô's primary commitment was to parliamentary politics. This was not an easy task in his time, partly because of contextual pressures but also because parliamentary politics, by nature, is disorderly. It assumes that common opinion is formed, not found, in open debate. Parliamentary politics rejects the assumption that the common life can be dictated to by any absolute authority, either in the form of personal rule or metaphysical principle. It is a learnt and self-consciously made compromise between private forces and the public good. Debate itself is a stage in the making of power that members of society are willing to accept. Saitô clearly assumed such a role for Parliament, and was aware of the historical mission of his generation to make Parliament the centre of power.

Saitô adhered to such principles of parliamentary debate. In this sense, he was a liberal polemicist. Various conditions hindered that debate, and one aim of this chapter is to examine Saitô's criticism of specific institutions and policies. Some factors may have been insurmountable, but others were clearly rectifiable, as he tells us. Saitô

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<sup>15</sup> Kusayanagi Daizô, *Saitô Takao kaku tatakaeri*, pp. 10-11.

reveals the limits and potential of Japanese parliamentary politics at his particular moment.

Much of Saitô's criticism of existing institutions and practices derives from his training as a lawyer and his knowledge of the British parliamentary system. Yet his initial propensities already embrace such principles as the rule of law and equality under the law, and he owes his general worldview to the early Meiji Enlightenment. Of the Enlightenment thinkers, he was most conscious of Fukuzawa Yukichi (1834–1901) and Katô Hiroyuki (1836–1916). Repeatedly he would refer to them as a source of confirmation or as a frame of reference. Thus although its influence is subtle compared to his more specific exposition of constitutionalism and party politics, the Meiji Enlightenment is largely responsible for shaping Saitô's thought.

As I have already mentioned, the Meiji Restoration was not the mere replacement of one political system by another. It was a cultural "revolution" spurred from the outside, a time of reorientation of society as a whole. The historical significance of the period was well understood by late Edo and early Meiji intellectuals such as Fukuzawa and Katô. They understood that mere importation of new technology and institutions from the West was not enough to advance their country. They took it as their mission to change the modes of thought of the Japanese. As Carmen Blacker puts it, "Like the *philosophes* of the French Enlightenment of the eighteenth century, they set out to educate their countrymen to an entirely new kind of learning, a new view of man and his place in nature".<sup>16</sup> They favoured science against Confucianism, freedom against submission, and parliamentary politics against the bakufu system.

Many of these intellectuals were western scholars who had gained first-hand experience of Western societies and political systems through their visits to Europe and the United States as members of the bakufu missions or as students. When the introduction of Western thought became urgent, they produced a series of books intended to disseminate the new knowledge and to educate the public. Fukuzawa wrote *Seiyôjijô* (1866–1870) aimed at introducing Western political systems and culture to the

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<sup>16</sup> Carmen Blacker, *The Japanese Enlightenment: A Study of the Writings of Fukuzawa Yukichi* (Cambridge: Cambridge University Press, 1964), pp. xi-xii.

Japanese, based on Chambers' Educational course, *Political Economy for Use in Schools* of 1856, and also on his own experience of staying in England.<sup>17</sup> He also published the equally influential *Gakumon no Susume* (1872–76), whose opening sentence, “*ten wa hito no ueni hito o tsukurazu, hito no shitani hito o tsukurazu*”, celebrates freedom and equality. He also wrote *Bunmeiron no Gairyaku* (1875), the aim of which was to introduce Western history and the genealogy of civilisations based on the writings of Buckle and Guizot, and also to criticise feudal traditions embedded in Confucian teaching. Fukuzawa was not alone. Katô Hiroyuki wrote *Rikken Seitairyaku* (1868) and *Shinsei Taii* (1870) to introduce Western constitutional systems. Nakamura Masanao's translations of Smiles's *Self-Help* and of Mill's *On Liberty* became best sellers in the early 1870s. The Western thought introduced into Japan by these *keimô* intellectuals in the early Meiji period was overwhelmingly Anglo-American and French, emphasising liberty, equality and *laissez-faire*, rather than the German *Staatslehre*. Japan's modern liberalism found its first voice among these intellectuals, and among them Fukuzawa was a leading figure.

Through his observation of British and American societies, Fukuzawa understood the strength of a nation to reside in the spontaneous activities of independent individuals. Thus his primary concern was to change people's attitudes towards the prevailing social order. To break the pattern in which people followed the established norms, Fukuzawa analysed and criticised those aspects of society he thought hindered the successful path to modernity.

He articulated his critical assessments most fully in *Bunmeiron no Gairyaku*.<sup>18</sup> As Guizot had used the German word *Eineitigkeit* to criticise “the fault of only seeing one side of a thing”,<sup>19</sup> Fukuzawa used the Japanese word *wakudeki* to criticise inertia in Japanese society, evident to him even in the samurai's adherence to the habit of carrying

<sup>17</sup> Maruyama Masao, *Bunmeiron no Gairyaku o yomu*, vol. 1, Iwanami Shinsho, 1986, p. 240.

<sup>18</sup> For how Fukuzawa incorporated Guizot and Buckle into his own thought, see Maruyama Masao, *Bunmeiron no Gairyaku o yomu*, 3 vols, especially vol. 3, pp. 1–76 (Guizot) and vol. 2, pp. 4–48 (Buckle).

<sup>19</sup> Stanley Mellon, “Editor's Introduction” in Mellon (ed.), François Guizot, *Historical Essays and Lectures* (Chicago: University of Chicago Press, 1972), p. xxviii. *Eineitigkeit* was the German word Guizot used to criticise “a partisan approach” in *légitimistes* or republicans in post-Revolution France. See *ibid.*, p. xxviii.



swords with no practical purpose during the Edo period. In more general terms, the ruler's claim to divine right irrespective of ability also reveals *wakudeki*, the habit of thought that can attribute value "to things in themselves irrespective of the way in which they function".<sup>20</sup>

For Guizot, intransigent adherence to "any single principle or any particular organisation" is the antithesis of freedom, the major driving force of progress, that separated European civilisation from the past and from other civilisations. Guizot says, "While in other civilisations the exclusive, or at least the excessively preponderating domain of a single principle, of a single form, has been the cause of tyranny, in modern Europe the diversity of elements which constitute the social order, ... have given birth to the freedom which prevails in the present day."<sup>21</sup>

Inspired by such an analysis, Fukuzawa launched his inquiry into the exercise of power in everyday life. His emphasis reflects the influence of the European Enlightenment, of Romanticism, and of nineteenth century English utilitarianism and liberalism as manifested in authors such as Mill. Thus in Japan Fukuzawa saw the operations of power that stifled individual freedom in a hierarchical social order justified by the *meibunron* discourse of Confucianism.

In *meibunron*, people are expected to act not on reason but on others' anticipation and one's prescribed role. For Fukuzawa, the social order built on such principles is incompatible with a society where people act spontaneously and rationally. If the *meibunron* principle is maintained, "we have to accept that the emperor is superior to court nobles and therefore he can order them to do certain things freely... that court nobles are superior to *han* lords and thus can manipulate them at their will, and the lords can manipulate their subordinates... and the lowest ranks of samurai can exploit peasants".<sup>22</sup> Fukuzawa rejects this system, where one is controlled by those above and at the same time controls others below.

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<sup>20</sup> Blacker, *op. cit.*, p. 177.

<sup>21</sup> Guizot, "The History of Civilisation in Europe", lecture 2, included in *Historical Essays and Lectures*, p. 164.

<sup>22</sup> Quoted by Maruyama, *Bunmeiron no Gairyaku o yomu*, vol. 1, pp. 109-10.

Here Fukuzawa's analysis of power suggests Foucault. For Foucault, power should be understood as "the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization".<sup>23</sup> Fukuzawa recognised such "a grid of intelligibility of the social order" in Japanese society justified by the *meibunron* discourse which perpetuated inequalities. But where Foucault saw such "enmeshed" power as modern, for Fukuzawa the similar forces of Japanese disciplinary power were feudal.

Hence Fukuzawa says: "Indeed, the evils of *meibunron* and its corollary of 'preponderance of power' were just as marked in the relation of ruler and subject as they were in the more intimate family relations of parent and child and husband and wife. Rulers, just as much as parents and husbands, were thought to be justified in wielding virtually unconditional power over their subjects."<sup>24</sup> Such criticisms of the "preponderance of power" provided powerful arguments against the norms of behaviour prevalent among the Tokugawa elite. Hence for Maruyama Masao, Fukuzawa is the first person to analyse the "pathology" of power in Japanese society.<sup>25</sup>

Fukuzawa envisages a radically new society where people can pursue their goals as freely as possible. In such a society, the role of government is to protect people's rights rather than dictating to them.<sup>26</sup> He is interested in the formation of spontaneous social force, a new public sphere capable of steering its own course. Thus he emphasised the role of public opinion, of freedom of assembly and of political parties in shaping

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<sup>23</sup> Foucault, *The History of Sexuality*, volume I: Introduction (Penguin Books, 1978/81), p. 92. Foucault says: "Power's condition of possibility... must not be sought in the primary existence of a central point, in a unique source of sovereignty from which secondary and descendent forms would emanate; it is the moving substrate of force relations, which by virtue of their quality, constantly engender states of power, but the latter are always local and unstable. The omnipresence of power: not because it has the privilege of consolidating everything under its invincible unity, but because it is produced from one moment to the next, at every point, or rather in every relation from one point to another. Power is everywhere; not because it embraces everything, but because it comes from everywhere" (*ibid.*, p. 93). Foucault is interested in social mechanisms that discipline individuals. Those mechanisms include such institutions as hospitals, schools, prisons, and the family. Foucault is discussed by Sheldon Garon in his study of "social control" in Japan. See Garon, *Molding Japanese Minds*, p. 4.

<sup>24</sup> Blacker, *op. cit.*, p.101.

<sup>25</sup> Maruyama, *Bunmeiron no Gairyaku o yomu*, vol. 3, p. 81.

<sup>26</sup> "If protecting people's rights was its sole task and function, it followed that the government's legitimate sphere of authority was strictly circumscribed. It did not possess the limitless scope of power of the Confucian ruler, for such power would contradict the very reason for its existence" (Blacker, *op. cit.*, p. 107).

such a public.<sup>27</sup> For a political system to function, common rules, which are agreed by the members of society, not morality, are necessary.<sup>28</sup> Thus Fukuzawa is vitally concerned with how to encourage exchange of opinion (*kô sai*). *Kaigi* (conference, meeting, assembly) and *enzetsu* (a speech) were among many words that Fukuzawa introduced into Japanese and which became part of the Japanese vocabulary.<sup>29</sup> In this way a new public was to be formed of freely acting communicating individuals. Fukuzawa saw such a public as a valid alternative to the absolute power that characterised the feudal system, and believed that any form of government should play an auxiliary role.

In consequence a critical view of the power that stifled individual freedom, which derived from the Meiji Enlightenment, survived in Saitô's thought, although the state structure was firmly in place by the time he began his political career. Thus he says in 1906: "Because the state is composed of the people... the interest of the state is their own interest. Therefore, when they are involved in politics, they are involved in their own affairs. This is a necessary condition for them to fulfil their lives."<sup>30</sup> Fukuzawa's efforts to transform the principles governing social organisation clearly continue in Saitô's case.

As for the role of government, Saitô says, "the ultimate aim of constitutional government is to make the common awareness of the people the engine of politics... a Constitution and Parliament are merely 'machines' intended to realise this goal. It is public opinion that reveals the common awareness of the people."<sup>31</sup> Of course an exact process by which both Parliament and political parties can be linked to public opinion is another matter, and we will investigate later, through his defence of such principles, the

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<sup>27</sup> Maruyama, *Bunmeiron no Gairyaku o yomu*, vol. 2, pp. 113-36.

<sup>28</sup> Thus Fukuzawa criticised Confucianism for confusing politics and morality. Maruyama quotes Fukuzawa as saying, "Morality may be very useful for the individual to act on his own, but virtue exists inside the person, and thus does not affect external objects. In a natural and chaotic society where people are not involved in each other's affairs very much, morality may be convenient to consolidate the people. But it must lose its power as society becomes more civilised" (Maruyama, *ibid.*, p. 63).

<sup>29</sup> Maruyama, *Bunmeiron no Gairyaku o yomu*, vol. 1, p. 82.

<sup>30</sup> Saitô, *Hikaku Kokkairon* (Tokyo: Keinan Shoin, 1906), p. 12.

<sup>31</sup> *ibid.*, p. 1.

difficulties of implementing such a process. Yet Saitô's views of a "civil" society and a suitable political system for it again link him to the traditions of Meiji liberalism.

Nevertheless adherence to concepts of progress and freedom do not guarantee one's rejection of imperialism. While Guizot used the term *Eineitigkeit* to criticise extreme radicalism either in the *légitimistes* or the republicans in post-Revolutionary France, Fukuzawa used the equivalent term *wakudeki* to promote social change. This emphasis on progress led him to start supporting an expansion policy in the 1880s. Maruyama attempts to explain Fukuzawa's "apostasy" as a classic example of a dilemma faced by intellectuals of a developing country, the conflict between universalism and particularism.<sup>32</sup> Here they are exposed to new ideas from a world beyond their immediate circumstances, while at the same time they are expected to communicate these ideas to their fellow countrymen. Placing themselves within a perceived hierarchy of knowledge and power, they are obliged to juggle with nationalism and internationalism simultaneously. Fukuzawa felt this dilemma acutely, and his concern for the future of his country eventually overwhelmed his initial detached assessment of state power. Saitô was relatively free from such nationalistic sentiments, because, I think, he remained an outsider by nature and by circumstance. I will return to this question of the change in the early Meiji Enlightenment tradition when I discuss Saitô's criticism of Japanese fascism in the 1930s.

However from the strand of the Meiji Enlightenment represented by Fukuzawa, Saitô inherited the spirit of sceptical independence. From Katô Hiroyuki, Saitô absorbed the scientific approaches of "evolutionary materialism," of which Katô was "the most systematic and influential *keimô* advocate". "This creed sought to solve the problem [reconciliation between man and Nature] by denying the existence of moral principles altogether", arguing "that not only external Nature but human nature and conduct as well were governed entirely by mechanical and regular law."<sup>33</sup>

It was Katô who also introduced into Japan the concept of the modern state articulated by Hobbes. Following Hobbes' justification of the state, Katô distinguished a

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<sup>32</sup> Maruyama, *Bunmeiron no Gairyaku o yomu*, vol. 3, pp. 239-40, and vol. 1, p. 47.

<sup>33</sup> Blacker, *op. cit.*, pp. 58-9.

political unity from a state of nature. In nature, people are savage and fight for survival. Yet they also have inalienable rights, and to preserve those rights they should agree to form an artificial association, which is the state.<sup>34</sup> Thus Saitô retained acute awareness of the “fictional” state, although Katô himself abandoned his support for inalienable rights late in life. In Saitô’s case, however, his staunch royalist position never subsumed completely his attention to the tension between political authority and individual freedom, and this awareness allowed him to remain critical of any force attempting to impose unity on society.

Also Saitô was not entirely persuaded by evolutionary materialism and positivism, although those ideas clearly influenced him. Nevertheless he used the phrase “*yûshô-reppai, tekisha-seizon*” in his writing and speeches throughout his life. The phrase is a Japanese translation of the “the survival of the fittest” first used by Herbert Spencer. It was Katô himself who introduced the phrase in the late 1870s and made it popular among Japanese intellectuals. Katô’s embrace of Social Darwinism, however, marked his departure from his initial adherence to the concept of inalienable rights. For him, social evolution meant that “All organic beings were endowed with an energy which, obeying fixed causal laws, sought for its possessor’s preservation and advantage, but which manifested itself in different forms according to the stage of evolution of its possessor. Reason, conscience and will... were simply evolved forms of this energy.”<sup>35</sup> Like his conservative counterparts in England, Katô understood Spencer’s theory as “a mechanism by which a social and natural hierarchy was preserved by the distribution to places in it of the ‘fittest’ ”.<sup>36</sup> Thus around this period, Katô began to criticise those *minken* (popular rights) activists who called for representative government on the grounds that they were legitimately entitled to participate, finding the concept unscientific and mistaken. Katô’s “apostasy” came shortly after the government’s dismissal of Ôkuma in 1881 after he had submitted his private opinion calling for the

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<sup>34</sup> Quoted by Matsumoto Sannosuke, “Tennôsei Hôshisô” (part II), p. 22.

<sup>35</sup> Blacker, *op. cit.*, p. 60.

<sup>36</sup> Greta Jones, *Social Darwinism and English Thought* (Sussex: Harvester Press, 1980), p. 8. “The idea of fitness tended to be imbued with conventional notions of the desirable and valuable. Change and evolution became the means by which ultimate order and the realisation of these ‘ideal’ faculties and types was achieved” (*ibid.*, p. 8).



early establishment of Parliament. Katô, who had become the first president of Tokyo University in 1877, publicly retracted his previous publications in which he had advocated the concept of inalienable rights.<sup>37</sup>

On the other hand, Saitô used the phrase “the survival of the fittest” not for justifying government policy but for questioning its compatibility with reality. He also used the phrase to emphasise his Hobbesian worldview (“*bellum omnium contra omnes*”) and his complementary view of human nature (“*homo homini lupus*”). However, while these viewpoints had prompted Hobbes to call for the establishment of a strong state that could provide security and yet demand the submission of individuals to that power, Saitô used the term to emphasise the temporary, expedient nature of government. Like Walter Bagehot, Saitô used the concept to support parliamentarianism, saying that that system was the most suitable form of government for social evolution.

Thus when the original aim to dismantle what they saw as feudalism was superseded by the perception that the country had succeeded in building a state, *keimô* advocates, most prominently Katô, changed their positions to protect the fledgling state institutions and the accompanying ideology. Yet in a clear sign of rebellion, Saitô in 1908 wrote an essay, criticising Katô for his attack on the emperor-as-organ theory.<sup>38</sup> For Saitô, the country’s sovereignty did not belong to the emperor alone. As in Britain and other constitutional monarchies, it should be exercised jointly by him and Parliament. Saitô adhered to this principle throughout his life, as we will find in his parliamentary speeches.

The rationality Saitô tried to emphasise using the term “the survival of the fittest” is a clear antithesis to the holistic views of the state, which had become increasingly orthodox. For him, political power was temporary and thus could not be absolute, a view shared by Minobe and Sakai. More importantly, the spirit of intellectual and political independence propagated by Fukuzawa was central to his worldview. That spirit had become increasingly threatened not only by the formation of the bureaucratic state but

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<sup>37</sup> For Katô’s *tenkô*, see Matsumoto Sannosuke, “Katô Hiroyuki”, pp. 34-9.

<sup>38</sup> The article appeared in the magazine of his alma mater, *Waseda Gakuhô*, October 1908, and is quoted by Matsumoto Ken’ichi, *op. cit.*, p. 138.

also by the regimentation of society. Yet the vulnerability of the spirit of independence is inherent in any debate between the whole and parts, unity and freedom, or between deductive and inductive norms. This perpetual divide was already apparent in Fukuzawa's and Katô's different views about how social order was to be achieved. Katô had abandoned his adherence to inalienable rights while joining government. Fukuzawa continued to emphasise them while refusing to do so, although he was later consumed by another kind of holism, nationalism.

As with Minobe and Sakai, Saitô inherited this mixed legacy of the Meiji Enlightenment and of nineteenth century thought in general. In Saitô's case, the influence is most recognisable. His detestation of bureaucrats came straight from Fukuzawa's writings, although his experiences outside the state education system clearly moved him in that direction. For an ambitious outsider, an enlightenment concept of progress that celebrated both individual ability and a common social good provided him with a most attractive and comforting intellectual foundation. His recurring references to the concept of the survival of the fittest, seen not as acquiescence in "the hegemonic process" but as a critique of it, reflect this lasting influence of the Meiji Enlightenment. Such a legacy is in sharp contrast to the later generations' perceptions of state power, for whom such unbridled individualism as Saitô's became increasingly remote.<sup>39</sup>

Saitô's speech of 1940 was therefore a criticism of imposed holism in the name of nationalism. Eighty years after the Restoration, Saitô repudiated the forces that were stifling freedom. Criticising the irrationality of policy, he also questioned its legitimacy. For him, if policy required such a high degree of coercion, it could not be rational both in theory and practice. Following Fukuzawa's efforts to free the individual from the "preponderance" of power, he opposed the new forms of hierarchy and the false unity that was being imposed on the people. We will now examine more fully the genesis and evolution of these forces as they relate to Saitô's dissenting views.

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<sup>39</sup> Saitô's individualism is thus in sharp contrast with the views of the so-called "1905" generation who matured between the Sino-Japanese and Russo-Japanese wars. These include: Kita Ikki, Nagai Ryûtarô (1881–1944), and Nakano Seigo (1886–1943). For Nagai's nationalism, see Peter Duus, "Nagai Ryûtarô, and the 'White Peril,' 1905-1944", *The Journal of Asian Studies*, vol. 31, no. 1, November 1971, pp. 41-8. In the last section of this chapter, I will compare Saitô's nationalism with that of Kita and Nakano.

## **4.2. Pre-war party politics: the challenge to government and institutional power**

The main props of Saitô's political career involve the defence of Parliament and of party politics. If we follow Habermas's formulation of the nature of a civil society, the key function of politics (or Parliament) is to mediate between conflicting interests, and the role of Parliament is to select and legitimise such initially private opinions so that they become "common". Saitô's understanding of the role of Parliament and the functions of politics, based on his knowledge of the British parliamentary system, points at such mediatory arrangements.

However, Japan's state-making clearly involved various factors that hampered such a process, including the inhibiting of a self-regulating mechanism for both politics and Parliament. Thus before analysing the strengths and weaknesses of Saitô's thought, I will survey pre-war party politics in order to address why politics became an enemy of government. In this section I will follow the birth of opposition parties, the ensuing antagonism between them and government, the establishment of the quasi-party Cabinet, and its demise. The formation of the state bureaucracy will also be examined as a counter force to politics.

Full-fledged political parties did not emerge in Japan until Parliament had become a reality. Nevertheless, modern political awareness was formed through early nationalist movements, hostile to aspects of Meiji reform, which became known as the *Jiyûminken Undô*.

The first decade of the Meiji era was far from tranquil. Local former samurai, whose livelihoods were severely curtailed by the new government, took up arms on various occasions as in the Saga Rebellion of 1874, the Akizuki Rebellion of 1876, and the Seinan Rebellion of 1878. All were suppressed by the newly formed national Army. Farmers also rioted in various parts of the country, protesting against the new policies of conscription, compulsory primary education, and high taxes. The *Jiyûminken Undô*

harnessed such popular discontent, and the transformation of amorphous popular sentiment was reinforced by newly emerging political societies.

Discontented former samurai took the initiative. In 1874, those who had left office in protest against the government's reversal of its plan to attack Korea, formed a small society called Aikokukôtô (Patriotic Public Party). The main members of the group were Itagaki Taisuke, Gotô Shôjirô, Soejima Taneomi and Etô Shinpei. Their platform proclaimed that the "party" aimed to protect common justice and inalienable rights, and to ensure people's freedom, independence, and self-determination.<sup>40</sup> To be free meant in effect to be free from the country's feudal past. For those ex-samurai, therefore, patriotism and freedom were mutually complementary. Although they emphasised national unity under the emperor's leadership, they proclaimed that the true purpose of government was to protect the people's autonomy. Invoking the Charter Oath's emphasis on *kôgi kôron* (public opinion and public debate), the group demanded the introduction of Parliament, and wrote a petition to this effect, with the help of young intellectuals who had returned from Britain. Shortly before the formal launching of Aikokukôtô, they submitted the petition to the government. When this appeared in the *Nisshin Shinjishi*, a major national newspaper, its publication initiated the nation-wide "Freedom and People's Rights" movement, Jiyûminken. Soon Aikokusha (Patriotic Society), which was formed by Itagaki in 1875 and which grew to have a dozen local branches across the country in a few years' time, became a driving force in 1880 for the formation of the Kokkai Kisei Dômei, a nation-wide association exclusively working towards the opening of Parliament.

The government's initial response to those movements was hostile. The Five Board Notices already banned collective action, reflecting the emergency dictatorial government's fear of organised opposition. As the Jiyûminken Undô grew, the government responded with various press laws and restrictions on political activities. Yet when its leaders realised they could not quell the movement entirely, they chose to compromise, agreeing on the introduction of Parliament in the near future. Nevertheless

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<sup>40</sup> Tôyama Shigeki and Satô Shigerô (eds.), *Jiyûtôshi*, vol. 1, Iwanami Bunko, 1957, pp. 87-8.

in 1881, at the peak of the Jiyûminken Undô, Ôkuma, who had advocated the introduction of a British-style Cabinet, was ousted from government. At the same time, the authorities promised that Parliament would be introduced along with a written constitution and popular elections in ten years' time.

At this point the Jiyûminken Undô split into several strands. In the same year, Jiyûtô, "Japan's first political party which had a manifesto and organisation",<sup>41</sup> was established under Itagaki's leadership. In the following year, Rikken Kaishintô, whose aim was also to introduce a British-style parliamentary system, was established, and around the same time, the more nationalistic Genyôsha. Nakae Chômin, who Sakai regarded as one of the founding fathers of the Japanese socialist movement, also began to publish his own propaganda newspaper.

Jiyûtô, a party which was more loyal to the tradition of the Jiyûminken Undô than Kaishintô, consisted of "passionate property-less" people attracted to the ideas of "freedom and rights" and also local leaders who were strongly dissatisfied with the government.<sup>42</sup> The party advocated freedom and equality, radical reform, a single-house Parliament, and universal suffrage, and attracted grass-roots support. On the other hand, Kaishintô was gradualist, and supported a bicameral Parliament, restricted elections, and a British-style responsible Cabinet run by political parties.<sup>43</sup> Jiyûtô after various mergers developed into Seiyûkai, and Kaishintô into Minseitô. Thus the two main parties in the pre-war period could both trace their origins in the Jiyûminken Undô.

As a political movement, however, the Jiyûminken Undô lost its momentum by the end of the 1880s. Its radical members, among whom Jiyûtô members were prominent, had helped local farmers to stage violent protests against local banks and money lenders, and also against heavy taxes, as in Fukushima and Chichibu. Yet the government's intensifying oppression and the gradual debilitation of independent farmers, who were the mainstay of the Jiyûminken Undô along with former samurai, as the result of the government's fiscal measures (Matsukata's fiscal policy), weakened the

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<sup>41</sup> Tôyama Shigeki, "Kaisetsu [Editors' Notes]", *Jiyûtôshi*, vol. 3, p. 439.

<sup>42</sup> Katô Seinosuke (ed.), *Rikken Minseitôshi* (Tokyo: Hara Shobô, 1973), vol. 1, p. 20. The original was published in 1935.

<sup>43</sup> *ibid.*, p. 20.



movement as a whole. Its leaders, such as Itagaki and Ôkuma, also faced the dilemma of whether to rejoin government or stay outside it to effectively influence government policy, and they began to distance themselves from more radical members. Their gradual withdrawal from the forefront of the protest movement also began to unravel the movement as a whole.

Although these factors contributed to the general decline of the protest movement, clearly the Jiyûminken Undô was destined to cease as a popular force at this stage, when it became clear that the centre of political debate was to be shifted to the newly created national assembly. When Parliament was introduced in 1890, Jiyûtô and Kaishintô constituted the opposition. Other opposition forces, such as radical nationalists, liberals and socialists, were left outside Parliament, evolving into fragmented yet persistent forces of social resistance.

Nevertheless, the eclectic Jiyûminken Undô was essential for the creation of modern political awareness among the Japanese. Although the new government was desperate to instil national sentiments, it was not through its programmes but through spontaneous movements such as the Jiyûminken Undô that the Japanese gained real opportunities to define their own political community.

In his study of the Jiyûminken Undô, the historian Irokawa Daikichi traces the activities of several young men who were involved in the movement in their respective communities. Their activities included intense debate about the form of government that they wanted to have, readings of *keimô* publications, and writing their own draft constitutions. Irokawa concludes that the Jiyûminken Undô was a grass-roots movement of undeniable influence in shaping national consciousness. What motivated the young men was their desire to participate in a new political community. They nurtured their critical views of the status quo with an awareness of their own nation.<sup>44</sup> In this respect, it seems to be appropriate to call the Jiyûminken Undô the first national movement.

Anthony Smith in this regard defines nationalism as “an ideological movement for attaining and maintaining autonomy, unity and identity for a population”,<sup>45</sup> and he

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<sup>44</sup> Irokawa, *Shinpen Meiji Seishinshi*, p. 24.

<sup>45</sup> Anthony D. Smith, *Nationalism* (Cambridge: Polity Press, 2001), p. 19.

emphasises a people's desire to form a common community as a main feature of nationalism. Thus in his definition nationalism is more a matter of one's engagement with a community that one believes to belong to rather than one's identification with given "national" symbols. Dismissing definitions solely based on objective factors such as "language, religion and customs, territory and institutions", he proposes to combine them with "subjective factors, such as attitudes, perceptions and sentiments".<sup>46</sup> In this sense, nationalism is a modern phenomenon, even as the role of nationalism is immensely relevant to the process of nation-building. "As a process of 'nation-building' and as an ideology and movement, nationalism and its ideals of national autonomy, unity and identity, are relatively modern phenomena, which have placed at the centre of the political stage the sovereign, united and unique nation, and have made over the world in their image."<sup>47</sup>

Typically therefore, modern Japanese nationalism entails acute political awareness, with the role of intellectuals essential to its emergence. The Enlightenment movement led by Fukuzawa and others is thus the direct sponsor of the Jiyûminken Undô.<sup>48</sup> At the same time, the fact that the initial political movements coincided with a national awakening had complex effects. The emphasis on the nation as ultimate value is a major characteristic of modern Japanese nationalism, and even opposition parties could not distance themselves from it: invariably their platforms contained an emphasis on national growth and expansion, even when they were discussing political liberties. Irokawa thus points out the diverse consequences of the Japanese national awareness stimulated by the Jiyûminken Undô, which ranged from an increased awareness of civil liberties, to a nationalism that supported the emperor system, and even fascism. One aim of this study of Saitô is to see how and when one can extricate oneself from notions of

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<sup>46</sup> *ibid.*, p. 11.

<sup>47</sup> *ibid.*, p. 46.

<sup>48</sup> In this sense, the formation of modern Japanese identity has some similarities with that of Germany. It was a response to external stimulus, rapidly formed, articulated by "a peculiar class of educated commoners, professional intellectuals", and also "the result of the confluence of several independent traditions, both imported (such as the philosophy of Enlightenment) and indigenous". See Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge, Mass.: Harvard University Press, 1993), p. 277.

the nation at a time when the nation is not only the prime authority but also a source of aspiration and inspiration.

Despite such an incipient inclination to embrace national well-being at the expense of the individual, the Jiyûminken Undô also paved the way for constitutionalism. Undoubtedly the movement provided the catalyst for the formation of a new political system based on Parliament and elections. "Strictly speaking, the politics that began in 1890 was not parliamentary. It did not lay down a clear path towards party politics."<sup>49</sup> Nevertheless, it signalled the definite beginnings of constitutionalism, a departure from "inclusive oligarchy", that ensured the principle that even the ruler had to obey agreed rules. Without this "take-off", neither party politics nor parliamentarianism was possible. "Without the Jiyûminken Undô, there would have been no such take-off in Japan."<sup>50</sup>

Although the opening of Parliament in 1890 ushered in a new political structure, party politics was handicapped from the very beginning. In the long run, the discriminatory election system introduced with the Constitution alienated the masses. Because of the tax-based eligibility restrictions, only 1.1 percent of the population could vote. From now on the general perception of party politics would be associated more with the operations of power than with the needs of ordinary people. Admittedly this was at a time when very few countries in the world had introduced universal suffrage.<sup>51</sup> Restrictive qualifications, based on landownership and tax payments, or educational achievements, were common. Nevertheless, in Japan this restricted popular representation created a serious handicap for Parliament in establishing its "worthiness" as a representative of "*min'i*" (popular will).

More immediate obstacles were soon erected by the government to block the advancement of parties into power. In course of time these obstacles became responsible, directly and indirectly, for the demise of party politics and constitutionalism in the 1930s.

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<sup>49</sup> Baba Yasuo and Banno Junji, "Seiji Hendô to shitenô Meiji Ishin", in Banno and Miyachi Masato (eds.), *Nihon Kindaishi ni okeru Tenkanki no Kenkyû*, p. 17.

<sup>50</sup> *ibid.*, p. 18.

<sup>51</sup> See, for instance, Andrew M. Carstairs, *A Short History of Electoral Systems in Western Europe*.

Thus in anticipation of the new parliamentary politics, Itô Hirobumi's government introduced what Takahashi Susumu and Miyazaki Ryûji call "non-elective bodies" which had strong political influence.<sup>52</sup> This involved the creation of the peerage system for the envisaged House of Peers (thereby creating a favourable stronghold in the envisaged Parliamentary system), creating a well-designed employment structure for bureaucrats, and introducing the Sûmitsuin (Privy Council). Both the House of Peers and the Sûmitsuin came to represent a serious problem for the operation of parliamentary politics, not only because they meddled in government but also because their presence obscured the centres of power.

Itô, explaining the aim of the Sûmitsuin in 1889, told Inoue Kowashi: "If government and Parliament disagree, only one of two steps will be possible, the resignation of ministers or the dissolution of Parliament by an imperial order. In such a case, we need advisers who can discern the general trend of the state and the sentiments of the people and can make good judgement [on which step to be taken]... This role should be played by none other than the Sûmitsuin."<sup>53</sup>

Itô here envisages a political structure which is inherently fragile. He was aware that some procedure was necessary to justify government action, since it could no longer claim legitimacy automatically. However, he was unable to foresee that the Sûmitsuin could not provide such justification. For it would never be seen as a neutral judge, because its members were appointed by government. In fact, the Sûmitsuin came under severe criticism as "a meddling force" manipulated by government, when parties were gaining strength.<sup>54</sup> When political parties actually began to govern (1924–32), they often clashed with the Sûmitsuin, as in the cases of the latter's refusal to endorse the government's plan to rescue the financially strained semi-governmental Bank of Taiwan in 1927, and to ratify the London Naval Treaty.

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<sup>52</sup> Takahashi Susumu and Miyazaki Ryûji, "Seitôseiji no Teichaku to Hôkai", in Banno and Miyachi (eds.), *Nihon Kindaishi ni okeru Tenkanki no Kenkyû*, p. 227.

<sup>53</sup> In a letter, quoted by Tsuji Kiyoaki, *Shinpan Nihon Kanryôsei no Kenkyû* (Tokyo: Tokyo Daigaku Shuppankai, 1965), reprinted 1992, p. 109.

<sup>54</sup> Article 56 says: "The Privy Councillors shall, in accordance with the provisions for the organization of the Privy Council, deliberate upon important matters of State, when they have been consulted by the Emperor."

Equally the House of Peers, which was given a constitutionally equal status with the elective lower house, often blocked the latter's bills, thus becoming a serious internal obstacle to the implementation of parliamentary decision.<sup>55</sup> In this respect, the Constitution's omission of Cabinet's joint responsibility aggravated the weakness of government by depriving it of the ability to safeguard leadership and policy-co-ordination.

In fact, those running government, including Itô, keenly felt the need for their Cabinet to have strong leadership and co-ordinating powers in order to carry out administrative reform, including reductions in military spending. They made serious efforts to introduce a Cabinet led by a prime minister who had strong authority, after Itô had returned from negotiations with China over the Treaty of Tianjin in April 1885.<sup>56</sup>

Thus the new Cabinet system of 1885, which was modelled after Prussia's state councillor system of 1810, gave strong authority to the prime minister. Article 1 of the new decree concerning the prime minister's jurisdiction says: "The prime minister advises on policy [to the emperor] as chief minister and outlines general policy and supervises each office of government." And Article 5 stipulates: "Laws, imperial ordinances and imperial rescripts require the countersignature of the prime minister and of a state minister in charge of the affair." Under the system the Navy and Army were also under the prime minister's general supervision. Thus Article 7 says: "Each minister has to report to the prime minister. Even military affairs assigned to the head of the General Staff Office (*sanbô-honbu*) in order to report to the emperor directly must also be reported to the prime minister via army and navy ministers."<sup>57</sup>

However, the Constitution, which came into force five years later, dropped such references to Cabinet and prime minister, and practically substituted the emperor for "the prime minister" in the above provisions.<sup>58</sup>

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<sup>55</sup> Of the 53 bills proposed and passed by the lower house between the first and sixth sessions (1890-94), only 13 were passed by the House of Peers. See Banno, *Meiji Kenpô Taisei no Kakuritsu* (Tokyo: Tokyo Daigaku Shuppankai, 1971), reprint 1986, p. 62. Banno attributes the weakening of the early parliamentary opposition to the influence of the House of Peers, see *ibid.*, p. 63.

<sup>56</sup> Inada, *Meiji Kenpô Seiritsushi*, vol. 1, p. 731.

<sup>57</sup> The decree is reprinted in *ibid.*, p. 746.

<sup>58</sup> Government leaders debated over the inclusion of joint responsibility during the final stage of writing the Constitution, but it was dropped as non-essential. See Inada, *op. cit.*, vol. 2., pp. 705-9. Thus Article 7



Thus the Constitution undid the initial aim of a Cabinet, which was to ensure policy co-ordination and leadership. Instead power was dispersed, embracing the military, the bureaucracy, the Cabinet, and also the newly introduced Parliament. The omission of joint responsibility resulted in a weak Cabinet incapable of holding together political power. At the same time it created a procedural framework whereby any one governmental body could claim its ultimate authority. Continuous bickering over the meaning of sovereign power ensued, as witnessed in the precarious treatment of Minobe's Emperor-as-Organ theory. As a result, the inherent instability surfaced each time government leaders had to formulate a national policy either in the case of war or of signing a treaty with other countries. Budgetary considerations, diplomatic relations and other non-military demands required that a civilian government assume precedence over the military, which the latter resented.<sup>59</sup>

In 1907, however, Itô and other civilian leaders successfully reversed the previous regulations concerning the issuance of imperial orders. Now all such orders, including military ones which hitherto had been issued unilaterally by the Army or the Navy, required a countersignature of the prime minister. Behind the move was again the need for a Cabinet to be able to exercise leadership in policy making, including military spending and deployment.<sup>60</sup> However, the military quickly introduced its own decree (*gunrei*) that excluded military orders from the new rules, thanks to the emperor's intervention. This strengthening of military autonomy coincides with what one historian calls the emergence of the military side of the emperor system (*tennôsei*)<sup>61</sup>, where an authoritarian state run by "non-elective" bodies relies on the presence of the emperor as both institutional and ideological leader.<sup>62</sup> A major victim of this defective structure

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of the decree became "The Emperor has the supreme command of the Army and Navy" (Article 11), "The Emperor determines the organisation and peace standing of the Army and Navy" (Article 12), and "The respective Ministers of State shall give their advice to the Emperor, and be responsible for it. All laws, Imperial Ordinances, and Imperial Rescripts of whatever kind, that relate to the affairs of the state, require the countersignature of a Minister of State" (Article 55).

<sup>59</sup> For such conflict between the Cabinet led by Itô and the military during the Sino-Japanese War of 1894-95, see Masuda, *Tennôsei to Kokka*, p. 62.

<sup>60</sup> For the content and the background of the new regulations (*kôshikirei*), see *ibid.*, pp. 49-72.

<sup>61</sup> Satô Shôichirô, "Kokka Shihon", in Ôishi (ed.), *Nihon Sangyô Kakumei no Kenkyû*, vol. 1, p. 361.

<sup>62</sup> *Tennôsei*, which is normally translated as the emperor system in English, is a Japanese translation of "absolute monarchy" as used in the Comintern's 1932 Theses, which also say: "The monarchy is the main

was parliamentary politics, for civilian control could never be achieved under such dispersed arrangements.

The diffuse spheres of jurisdiction in the bureaucratic structure also made it difficult for party government to function effectively, according to Tsuji Kiyooki. State ministers, he points out, ran their ministries directly, and were constitutionally independent of the prime minister. This arrangement gave the bureaucracy a significant amount of autonomy and of influence on cabinet decisions. "Thus, even if a party Cabinet emerged, it would not be possible for it to totally rely on parliamentary politics in order to function effectively, because it would constantly need bureaucrats' support and endorsement."<sup>63</sup> This structure effectively prevented a Cabinet from developing into an independent decision-making body, and seriously inhibited the spontaneous growth of party politics.

Bernard Silberman also relates the operation of the bureaucratic state at the expense of party politics to historical causes. Applying Max Weber's definition of bureaucracy as "a legal-rational" form of domination, Silberman asserts that the Meiji government as a revolutionary authority lacked firm grounds for justifying its rule. Accordingly the Meiji leaders had to create legitimacy and authority. They had to rely on bureaucratic expertise and form, because the bureaucrats could produce "neutrality", "predictability", and an "authority" that could be seen as serving for the good of the whole.<sup>64</sup>

"In short, where unrestricted development of legal-rational norms occurs in the bureaucratic role it tends to produce a structure which claims autonomy and primacy because of its efficiency, universalistic values, and commitment to national rather than special interests. When this occurs, as in the case of Japan, political parties cannot confront the bureaucracy directly without leaving themselves open to the charge of selfishness and self-seeking. The parties are thus forced to remain subordinate, and from

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pillar of political reaction and of the relics of feudalism in the country" (See *1932 Theses*, in Beckmann and Okubo, *The Japanese Communist Party 1922-1945*, p. 336).

<sup>63</sup> Tsuji, *op. cit.*, p. 111.

<sup>64</sup> Silberman, "The Bureaucratic State in Japan: The Problem of Authority and Legitimacy", in Najita and Koschmann (eds.), *Conflict in Modern Japanese History*, p. 251.

this lack of equilibrium evolves the pattern of politics exemplified by the Japanese case.”<sup>65</sup> Here the absence of legitimacy of the initial Meiji government, and the real and perceived demands of a form of state-making that emphasised efficiency and expediency, created a hostile environment for party politics.

However, such a structure based on “rationality” is inherently fragile, because it cannot cope with forces outside its sphere of influence, such as labour and tenant movements, as in Taishō Japan. Also this structure promotes not only dependency but also autonomy among the organisations under its wing. Thus Karl Mannheim distinguishes between “substantial” and “functional” rationality. Substantial rationality entails “acts of thought which reveal intelligent insight into the inter-relations of events in a given situation”.<sup>66</sup> Functional rationality means “a series of actions organized in such a way that it leads to a previously defined goal, every element in this series of actions receiving a functional position and role”. Yet functional rationality cannot substitute for substantial rationality in providing the authority that can deal with the whole structure.

Thus in a bureaucratic state, unity and central authority become constant problems, since the bureaucracy cannot provide them. “It was precisely this flaw—the absence of authoritativeness in the basis of legitimacy—that was, I would suggest, the source of the crisis of authority that accompanied the new century in Japan.”<sup>67</sup> Weak parliamentary politics was both a symptom and a cause of the absence of authority that could claim a “common” legitimacy.

“Common” legitimacy became a fundamental problem of the pre-war political system precisely because the system had undermined the procedural framework of decision making. Habermas defines the legitimation of political action as a two-stage process. First, people have to agree on the meaning of legitimacy, and then based on that common understanding, they have to agree on “the worthiness” of political action. Therefore, “the procedures and presuppositions of justification are themselves now the

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<sup>65</sup> Silberman, “The Bureaucratic Role in Japan, 1900-1945: The Bureaucrat as Politician”, in Silberman and Harootunian (eds.), *Japan in Crisis* (Princeton, N. J.: Princeton University Press, 1974), pp. 215-16.

<sup>66</sup> Karl Mannheim, *Man and Society* (London: Routledge & Kegan Paul, 1940), p. 53.

<sup>67</sup> *ibid.*, p. 253.

legitimizing grounds on which the validity of legitimation is based”.<sup>68</sup> Thus Habermas asserts that without procedural guarantees no real common legitimacy can be assured for political action. Here Habermas is discussing the general democratic decision-making process, not exclusively parliamentary politics. Nevertheless, this two-stage process of justification is applicable to parliamentary politics, because it underlines the importance of appropriate forms, or “procedures and presuppositions”, for justifying political action. For politicians to assert that they are indeed legitimate policy makers, they need a procedural framework to work in. Saitô’s contribution as a parliamentarian stemmed from his awareness that effective politics needs such endorsement.

Relevant here is Dicey’s crucial description of discretionary power, which I have examined in Chapter 1. Discretionary power has no form, being free from “legal constraints”, and Dicey shows how it can undermine the normal operations of parliamentary government. Here even the bureaucratic role needs to be restricted. Thus, as Silberman puts it, “high levels of political development can be reached in the long run only when there are limitations placed on the development of legal-rational norms in the bureaucratic role and structure”.<sup>69</sup> In the absence of appropriate form, party politics became the victim of a system incapable of substantial rationality.

Maruyama’s well-known trinity of the Japanese totalitarian political structure during World War II again highlights the absence of appropriate procedure. The trinity consists of “the Portable Shrine, the Official, and the Outlaw”.<sup>70</sup> The Portable Shrine refers to the emperor, an ideological leader, the Official to both civilian and military bureaucrats, and the Outlaw to those who were outside the normal political institutions and who tried to influence the top echelon’s decision through various means, including violence. Maruyama’s portrayal captures the working of a “formless” cluster of non-accountable powers. Hence Saitô’s ostracism signals not only the rejection of

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<sup>68</sup> Habermas “Legitimation Problems in the Modern State”, in William Outhwaite (ed.), *The Habermas Reader* (Cambridge: Polity Press, 1996), reprint 2000, p. 251.

<sup>69</sup> Silberman, “The Bureaucratic Role in Japan, 1900-1945”, p. 216.

<sup>70</sup> Maruyama, “Thought and Behaviour Patterns of Japan’s Wartime Leaders”, *Thought and Behaviour in Modern Japanese Politics*, p. 128.

“substantial” rationality from politics, but also the demise of fragile formal arrangements.

Despite such inherent handicaps, party politics did begin to function in Japan immediately after the opening of Parliament. As expected, the government’s immediate reaction was to prevent parties from gaining power. Shortly before the opening of Parliament Prime Minister Kuroda Kiyotaka told a group of prefectural governors that the government was determined to stand outside parties in order to ensure its own course and fairness. Itô Hirobumi also issued a statement that the country would not adopt party politics.<sup>71</sup> Nevertheless, opposition parties (*mintô*) vigorously fought against government over the reduction of taxes, and often succeeded in forcing the government to change its policy. The parties were able to exercise such influence because the Constitution also recognised the parliamentary veto in such key areas as the annual budget.<sup>72</sup>

Japan’s first party government appeared in 1898, led by Kenseitô, which was formed through a merger between Itagaki’s Jiyûtô and Ôkuma’s Shinpotô, although the merger ended in four months because of policy difference. In 1900, Itô Hirobumi chose to establish his own political party, absorbing the Jiyûtô. Parties steadily grew, and in 1912 a popular magazine was able to hail the party era.<sup>73</sup>

Mitani Taichirô attributes the rise of political parties in pre-war Japan to both domestic and international forces. Domestic change meant that people had begun to express their desire to participate in decision making. The two wars that Japan fought and won, the Sino-Japanese War and the Russo-Japanese War, had increased such popular desire. The government had sought the people’s sacrifice through higher taxes and conscription, and in this way the state entered into people’s lives more significantly. This closer tie between the state and the people not only strengthened their national

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<sup>71</sup> According to Banno, behind its insistence on secular “transcendentalism” was the government’s need for a bureaucratic state, a state structure that could co-ordinate and execute policy unilaterally. Party politics, which was associated with local interests, were now regarded as detrimental to “unified” politics. See Banno, *Meiji Kenpô Taisei no Kakuritsu*, pp. 29-37.

<sup>72</sup> The Constitution stipulates that law is necessary to raise taxes (Article 63). This requirement became all the more serious a shackle for government in its parliamentary tactics when it required tax increases to finance increasing expenditures to support industrial and military expansion after the Sino-Japanese War. See Banno, *ibid.*, pp. 119-20.

<sup>73</sup> Mitani Taichirô, *Nihon Seitô Seiji no Keisei*, p. 211.



identity but also their demand that they play a more prominent role in determining government policy. Thus the local universal suffrage movements began shortly after the Sino-Japanese War. Industrialisation also meant the emergence of private entrepreneurs and thus diverse private and local interests. Policy co-ordination became all the more necessary. Also, the increasing prominence of Japan's regional position after the victories of the two wars necessitated unified diplomatic policy. In other words, Japan now required a policy based on substantial inter-relatedness rather than on functional direction.

This situation was now significantly different from the post-Restoration setting, which was much simpler in terms of policy formulation. Although they too had to fight against opposition to implement their policy, even in the absence of real popular and diplomatic pressures, the Meiji leaders could work single-mindedly, setting and pursuing their national goals. The government was still small, forces against it were unorganised, and it was able to focus on domestic policy alone. As a result the early leaders managed to maintain a certain consistency in their policy.

When the country began to see the emergence of diverse private interests, and also became a regional power, the need for policy co-ordination became all the more necessary. The country now needed "modern" politicians for the first time. This was the role to be played by the generation, to which Saitô belonged, which had grown up with the Jiyûminken Undô and witnessed the first opening of Parliament.

Mitani's study focuses on Hara Takashi (1856–1921) who for him symbolises this shift in the role of politicians in government. Hara became president of Seiyûkai in 1914, and four years later was the first prime minister to be chosen based on his party's strength in Parliament. Possessed of a flexible vision and the bureaucratic skills needed to organise and run a party, Hara, a Machiavellian, appreciated the transience of political power, and was free from imperialist ideology. Unafraid of compromise, he emphasised "*jisei*", force of time, as an indispensable factor to determine policy. At the same time he took Parliament and the role of parties seriously. Such flexibility and fundamental adherence to parliamentary politics were common among his generation. Thus party

politics was born and grew as a generation which had known the Jiyûminken Undô responded to the new political realities.

Nevertheless, Japan's era of pre-war party politics was short-lived. Its symbolic ending came in 1932, when the civilian Prime Minister Inukai was assassinated by military officers. This end of party politics coincided with the departure of this generation either by retirement or by force.

Party politics had also their internal problems that facilitated their demise, along with their constitutionally weak position. Although parties gained momentum in the early 1910s, they soon appear to have lost public confidence, because they could not align politics with the populist domain. Most importantly they could not shift policy priorities sufficiently away from expansion and national unity. Thus the demise of party politics was in part the inevitable consequence of politicians' failure to create a vision of an alternative future.

As a major cause of stifling party organisation, Mitani also cites undeveloped social organisations outside Parliament.<sup>74</sup> There are two major reasons for this. One reason of course is government's constant attempts to check social movements through various measures, such as the press laws and police regulations. This pattern is recognisable throughout the pre-war period. Thus when the electoral law was changed in 1900 to expand the electorate, it was accompanied by the Peace Police Law, which targeted growing labour movements. Hara himself resisted the introduction of universal male suffrage. When it was finally introduced in 1925, it came with the Peace Preservation Law. Government, then run by a political party, had refused to modify the country's policy priorities.

Extra-parliamentary organisation may also have been affected by the speed of Japan's social regimentation, as Maruyama explores. A capitalist economy had quickly penetrated into people's everyday lives, intensifying alienation. Due to the recession after World War I, many regional banks that supported local businessmen and thus local politicians collapsed. Politicians now had to rely on their parties financially, and they in

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<sup>74</sup> *ibid.*, p. 213.

turn on big companies for their funds.<sup>75</sup> Monopolies developed within the media, and mass manipulation became a possibility. There was little opportunity for grass-roots politics to grow.

In this general development politicians were more and more detached from ordinary people. Instead, they were aligned with political power in general. The suppression of socialist and communist movements demonstrated how government, led by parties, could resist the growing demands for public participation in government decision making. In all of these ways the classic tension between “development” and “democratisation” is apparent, with party politics consumed by either its institutional weakness or its own inertia. All of this acted on Saitô as a kind of provocation, and we will now examine his attempts to bring parties to the centre of politics.

#### 4.3. Saitô and the containment of power

“The absence of authoritativeness in the basis of legitimacy”—the unsettled question about who had ultimate authority in decision-making—was keenly felt by members of Parliament, including Saitô. They had not only to discuss immediate issues but also to grope for a source of legitimacy that could justify their arguments. Exposed to the British parliamentary system and in the face of the embryonic stage of his own country’s political structure, Saitô also felt the need for such definition. For this project, he took up the term “*kokumin seiji*” as his conceptual tool.

The phrase *kokumin seiji* (national or popular politics) recurs in his writings and speeches throughout his life. In one sense it means parliamentary politics based on the British two-party system, to which he adhered. In a broader sense it echoes Saitô’s life-long concern about the nature of political power permissible in a society where people remain free and independent. Saitô’s visions, however, were not always compatible with liberal universalism. On some occasions he was a staunch partisan, and defended the

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<sup>75</sup> Masumi Junnosuke, *Nihon Seijishi*, vol. 3, *Seitô no Chôraku* (Tokyo: Tokyo Daigaku Shuppankai,

expansion policy, including the ill-fated Twenty-one Demands for China in 1916. Nevertheless, his intellectual and temperamental opposition to the power that encroached on the liberty of the individual remained steady, and this stance provides his thought with recognisable integrity.

In this section, we will therefore examine two themes that Saitô understood as key principles of parliamentary government: the limitation of power and political accountability. We will trace these principles in his support for a two-party system, for universal male suffrage, and also in his criticism of the discretionary powers of the Sûmitsuin, of the *genrô*, of the powerful House of Peers, and in the use of imperial prerogatives (*taiken*).

For the cultivation of his political views, Saitô is clearly indebted to nineteenth century British liberal thinkers and constitutional scholars, in particular to John Stuart Mill, Walter Bagehot, and A.V. Dicey. The *Kokkai Hikakuron*, which he published in 1906 privately, echoes his reading of their works, particularly Mill's *On Liberty* and Dicey's classical study of English constitutionalism *An Introduction to the Study of the Law of the Constitution*. From Mill Saitô absorbed the justifications for representative government, and from Dicey how it could be achieved. In the opening page of his *Kokkai Hikakuron* Saitô defines the common awareness of the people as "the engine of politics". Thus any political force that does not command common awareness is illegitimate, because it does not have authority over the people. "... Authority that produces power does not occur accidentally... It is based on the will of the people... Any authority not based on the will of the people will eventually dissolve, however strong it may look."<sup>76</sup> At this stage, however, Saitô by no means endorses the principle of equality or universal suffrage. On the contrary he accepts inequality in talent and motivation. Yet he understands that the will of the people is a legitimate concept to assert a form of government that defends personal freedoms.

The liberty of the individual is central to Mill's thought. He believes that social progress is possible only if people are free to engage in their own activities. Mill also

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1988), p. 106.

<sup>76</sup> Saitô, *Kokkai Hikakuron*, p. 11.

believes that men are capable of “rational choice” in the collective attempt to conduct their own affairs. Representative government is better than despotism, because the former provides the people with a chance to develop their own abilities, while the latter stifles such development.

According to Mill, there are two schools of thought concerning the origins of political institutions. One school insists that government is “strictly a practical art, giving rise to no questions but those of means and an end”.<sup>77</sup> The other school thinks that forms of government are not a matter of choice, but “a product” of a people’s “habits, instincts, and unconscious wants and desires, scarcely at all of their deliberate purposes”.<sup>78</sup> Mill is opposed to both schools. He wants to see the participation of self-conscious individuals in the deliberate formation of a nation’s political institutions.

“Let us remember”, Mill claims, “that political institutions (however the proposition may be at times ignored) are the work of men; owe their origin and their whole existence to human will... In every stage of their existence they are made what they are by human voluntary agency... On the other hand, it is also to be borne in mind that political machinery does not act of itself. As it is first made, so it has to be worked, by men, and even by ordinary men. It needs, not their simple acquiescence, but their active participation; and must be adjusted to the capacities and qualities of such men as are available.”<sup>79</sup> For the active participation of a people, three conditions are necessary: their acceptance of the form of government, willingness to accept change, and practical commitment.<sup>80</sup> Representative government is the most acceptable form, if not the best, to realise these conditions.

Directly echoing Mill, Saitô says, “Human thought and activity must be actually used. They can be developed only when they are used. They will not grow otherwise... Under despotism, the people’s freedom of speech and activity will be prevented, and there will be no chance that they will develop.”<sup>81</sup> With this end in mind, Saitô approves

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<sup>77</sup> Mill, *On Liberty and Other Essays*, Oxford World’s Classics, 1991, p. 205.

<sup>78</sup> *ibid.*, p. 206.

<sup>79</sup> *ibid.*, p. 207.

<sup>80</sup> These are “the three fundamental conditions of the adaptation of forms of government to the people who are to be governed by them” (*ibid.*, p. 211).

<sup>81</sup> Saitô, *Kokkai Hikakuron*, p. 19.



the British-style parliamentary system wholeheartedly. The influence of Jiyûminken Undô and Fukuzawa notwithstanding, his reading of Mill and others made his vision of an ideal political system more specific and focused.

From Dicey, Saitô learned the working principles and mechanism of a constitutional system. The aim of a constitutional system is to limit monarchical authority so as to safeguard personal liberties. This principle, which he had no difficulty in accepting because of his individualistic outlook, made a lasting impression on him. Saitô imagined political power as the expression of a fictional agreement of a people so as not to stifle their liberties in any fundamental way. This understanding provided him with a firm theoretical ground for asserting and examining political action based on legitimacy.

Saitô also learned, from Dicey, the evolution of the English constitutional system. It has evolved and is still evolving based on the principle of liberty. The fact that constitutional conventions are as important as law for its operation testifies to the indispensability of common understanding of that principle. He quickly applies Dicey's claim to his own country's Constitution, and concludes that straightforward application of the Constitution results in despotism. Saitô says,

Without the help of conventions, a constitutional system cannot function. It becomes apparent if we think of the Japanese case. Under the Constitution, the emperor can dissolve the House of Representatives as many times as he likes. He can reject a bill passed by Parliament. If Parliament refuses to pass a law, the emperor can avert the crisis by issuing an emergency order or an independent order. If Parliament refuses to pass a budget, he can implement the previous year's budget, and also spend irrelevantly to a national budget. The emperor can appoint state ministers freely. They are responsible to the emperor alone, and not to Parliament. This means [theoretically] that those ministers will keep their posts even if they act against the will of Parliament. If we actually apply these principles and assume that that is the way of conducting constitutional politics, constitutional politics and Parliament will have no meaning in our country.<sup>82</sup>

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<sup>82</sup> *ibid.*, p. 47.

Thus in Japan restraining conventions are essential in order to ensure constitutional politics, precisely because the Constitution does not guarantee their continued existence.

Clearly the idea of political evolution encouraged Saitô. The English system is most advanced, and his own country's system is still in its infancy. But there is no reason why the country cannot reach that stage, but only if progress is made based on the principle of limiting unqualified discretionary power. Thus Saitô expounds his own emperor-as-organ theory: "The monarch, who may be called normally absolutist, is in fact a mere organ of the people."<sup>83</sup> What he means by "organ" here is that any political power exercised by the monarch is subject to an agreement, either by law or through convention.

Here Saitô shares with Minobe the challenge of how to create a political creed in tune with such constitutional principles. In Saitô's case, the challenge was more immediate as it was combined with everyday politics. The above theme recurs in his parliamentary speeches and writings, and the attempt not only to discuss immediate issues but also to create enabling political conventions became his major task as a parliamentarian.

Saitô's support for a two-party system exemplifies his efforts to combine a political creed with everyday politics. Thus in early 1914, as a member of the opposition Dôshikai, he urged his colleagues to work towards joining other parties so as to create a single party strong enough to compete against the ruling Seiyûkai, which held 203 seats, compared with Dôshikai's 93 seats. During a speech he delivered soon after, at a party meeting, Saitô proclaimed that Japan was most highly suited to two party rule. Quoting Lawrence Lowell's *Governments and Parties in Continental Europe* of 1896, in which the Harvard political scientist analysed why a two-party system failed in many European countries, Saitô cited several conditions detrimental to the system: a multiracial society, strong socialist parties, diverse regional differences, religious conflicts, and persistent differences about national polity as in the confrontation between monarchists and republicans. Following Lowell he also cited unhelpful national temperaments. In a

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<sup>83</sup> *ibid.*, p. 23.

simple but forceful manner Saitô told his colleagues that Japan had none of these problems, and was suited to a two-party system.

Yet the real aim of the speech was to criticise other members of Parliament for their inability to work together based on shared opinions. According to Lowell, “Such a consensus is the foundation of all political authority, of all law and order; and it is easy to see that if it were seriously questioned, the position of the government would be shaken, that if it were destroyed, the country would be plunged into a state of anarchy.”<sup>84</sup> Those who do not accept “the consensus on which the political authority of the day is based are termed in France Irreconcilables”. Saitô blames Japanese Irreconcilables for blocking the prompt formation of a two-party system in Japan.<sup>85</sup> He further criticises the politicians’ inability to formulate policy based on a thorough examination of the issues as well as on shared political belief. Such articulation is essential for the active exchange of opinion that sustains a two-party system.<sup>86</sup>

Saitô also sees the two-party system as a “mode of limitation”, affecting the individual and the community, and as a self-regulating mechanism whereby power is transferred from one party to another based on public support. He understands and affirms Mill’s distinction between legitimate and illegitimate power vis-à-vis the liberty of the individual. No power is permanent and absolute, and the rulers must be “elective and temporary”.<sup>87</sup> Saitô’s support for a two-party system springs from his understanding of authority and legitimacy, in which Mill’s influence is palpable. Saitô went on to develop these arguments in his *Kenpô oyobi Seijironshû* of 1915, his meditation and inquiry into Japan’s party politics with reference to the British system.

Here he emphasises the role of opposition, not just that of an opposition party but also of public protest. Both are indispensable parts of the self-regulating mechanism. “If Parliament does not represent the popular will (*min’i*), popular movements are

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<sup>84</sup> A. Lawrence Lowell, *Governments and Parties in Continental Europe* (London: Longmans, Green, and Co., 1896), vol. 1, p. 102.

<sup>85</sup> Saitô, *Ôshû Shokoku no Seitô Jijô o ronjite Nihon no Seitô ni oyobu* (Tokyo: Keinan Shoin, 1914), p. 23. He repeats the same argument in his *Kenpô oyobi Seijironshû* (Tokyo: Keinan Shoin, 1915), p. 94.

<sup>86</sup> Saitô, *Ôshû Shokoku no...*, pp. 38-9.

<sup>87</sup> Mill, *op. cit.*, p. 7.

inevitable. By so doing they are merely exercising their political rights.”<sup>88</sup> The more politically aware the people become, the more vocal they will become, and this trend is positive rather than negative for the sake of social progress. “If such movements did not take place, popular morality would have been destroyed, plunging politics into an abyss.”<sup>89</sup> Apparently at this time Saitô as a lawyer was defending those who took part in the mass demonstration in Hibiya Park against the Yamamoto Cabinet over a bribery scandal involving naval officers and the German firm of Siemens and the British firm of Vickers.<sup>90</sup>

Similarly, as a member of the oppositional Dôshikai, it was easy for Saitô to attack the Cabinet. Yet he maintained his tolerance of different opinion, because he believed in the freedoms that promote social progress. He never accepted communism, and his patriotism, on more than one occasion, made him sound a conservative who was uncomfortable with the radical views of both right and left. However, he always remained alert to any force that tried to reduce personal freedom.

As with Minobe and Sakai, Saitô was attentive to social change and ready to modify his position accordingly. Hence the post-war moves towards democracy led him to revise his views about acceptable government. One such change is seen in his support for universal suffrage in place of the two-party system.

Until 1919 Saitô had been opposed to universal suffrage. Yet in a speech on 26 February 1920 he explained why he and others submitted a bill supporting it. The post-war world was embracing democracy, and universal suffrage was fast becoming a common practice in the West.<sup>91</sup> He saw the victory of Britain and its allies as a victory

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<sup>88</sup> Saitô, *Kenpô oyobi Seijironshû*, p. 110.

<sup>89</sup> *ibid.*, p. 113.

<sup>90</sup> Immediately after *The London Telegram* had reported those firms' corrupt contractual agreements with the Navy, the scandal was widely reported by newspapers, instigating many anti-government demonstrations, including violent confrontations between demonstrators and the police in Hibiya Park on 10 and 14 February. The Dôshikai took the lead in the protest movement against the government led by Seiyûkai-backed Yamamoto Gonnohyôe, who was an admiral. The Yamamoto Cabinet resigned en masse on 24 March.

<sup>91</sup> Saitô's concern is with the global trend in which male universal suffrage has become a norm, and even women's suffrage was being introduced. The number of voters jumped from 7.7 million to 21.4 million in Britain with the 1918 reform; from 24 million to 44.5 million in 1920 in the United States; and from 14 million to 37 million in 1919 in Germany. In this respect, Japan is not unusual. Under the proposal, the electorate would number 12.4 million, although the increase was four fold. Yet the number of voters per

of democracy. Germany and Italy, the losers of the war, epitomised “bureaucratic, military government” where constitutional representation was merely nominal, and which was now defeated by the “democracies”. The results of the war thus reinforced Saitô’s adherence to “*kokumin seiji*”. In his speech, Saitô reiterated the principle that only a government that had popular support was capable of the authority necessary for national politics. Universal suffrage was now essential to the reinforcement of that channel between the popular will (*min’i*) and national decision-making. “Without universal suffrage, it will be impossible to... help the people demonstrate their political abilities, and prompt popular, national unity, and it is impossible to solve the country’s domestic problems.”<sup>92</sup> Equally, without such genuine national unity, it will be impossible for the country to cope with recent global changes and to maintain its regional leadership. Saitô reiterates his point that government which is not based on popular support is weak, and sees the strengths of Britain and its allies in the form of governments based on popular support. He criticises the Hara Cabinet, saying that it cannot solve the problems confronting it because it is influenced by “invisible” forces that derive from the present restrictive elections. If it wants to tackle inflation or solve labour and other social issues, “the capitalist and propertied class will oppose it”. “In short the government is weak because it is not based on the masses but based on a minority. This weakness hurts the government, and eventually hurts the people as a whole.”<sup>93</sup>

Later that year, in the general election that took place under the first single-seat constituencies system, Saitô lost his seat. In 1924 he regained it, and in March 1925, he delivered a speech supporting male universal suffrage as a member of the ruling party. In this two-hour speech, he surveyed the past attempts to extend the suffrage. In 1903, a bill for introducing universal male suffrage was submitted to the House of Representatives for the first time, and in 1911 it was passed by that house, but rejected

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100 residents would remain as low as 25, compared with Germany’s 60, Britain’s 49, and the United States’ 42, according to Saitô. See the *Teikoku Gikai Shûgiin Giji Sokkiroku* (transcripts of parliamentary debates at the House of Representatives, the Imperial Diet, reprinted by Tokyo Daigaku Shuppankai, from 1985, hereafter TGSGS), vol. 46, p. 480.

<sup>92</sup> TGSGS, vol. 36, p. 317.

<sup>93</sup> *ibid.*, p. 316.



by the House of Peers. Saitô asserted that “It is an unarguable fact that the present constitutional countries have passed the stages of oligarchy and bureaucracy, and moved to democracy (*tasû seiji*) and *kokumin seiji*. The ideal of universal suffrage stems from the principle of political equality: asset-based privileges should be no longer recognised. The state should be removed from the monopoly of a minority and made into something common among the people, thus making state and people identical, and their interests also.”<sup>94</sup> Here Saitô’s adherence to *kokumin seiji* echoes Mill: “... [T]he rulers should be identified with the people... Their power was but the nation’s own power, concentrated, and in a form convenient for exercise.”<sup>95</sup>

Saitô summarises two main sources of opposition to the introduction of male universal suffrage. One is that universal suffrage is incompatible with the country’s constitutional principles. To defend his position, he invokes the Constitution and also the Charter Oath, whose first article called for public debate on policy decisions. As we have seen already, “public opinion” in the Charter Oath did not necessarily mean bona fide popular opinion. Yet Saitô uses the article, as other political reformers do, to promote wider political participation, thus reinterpreting the very meaning of “public” (*kô*) to justify his position. He was able to do so because both the Charter Oath and the Constitution touched upon the question of legitimate authority: in the very phrase “public opinion” in the former, and in the legislative role of Parliament ensured by the latter. Saitô, as a member of the ruling party, confidently claims that universal suffrage reflects the basic principles of the country’s constitutional system.

Another major criticism of universal suffrage is that it is linked to “dangerous” thought, and such radical change will disturb the social order. When Saitô counters such criticism, his background as an advocate of liberal individualism reveals itself. After the Russian Revolution and the global trend of democracy, all kinds of thought were introduced into Japan, Saitô confirms. Thus when Morito Tatsuo, a junior professor of Tokyo Imperial University, introduced Kropotkin’s theories in an academic journal in late 1919, he came under fierce criticism from the nationalist student organisation

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<sup>94</sup> TGSGS, vol. 46, p. 478.

<sup>95</sup> Mill, *op. cit.*, p. 7.

Kôkoku Dôshikai as an advocacy of anarchism.<sup>96</sup> The university authorities yielded to such pressure, and suspended Morito and Ôuchi Hyôe, editor of the journal, from the university. They were prosecuted for violation of the Press Law. In 1920 the Supreme Court ruled they were guilty.

Implicitly referring to such cases, Saitô repudiates what he sees as extreme sensitivity on the part of the authorities. Echoing Mill's endorsement of diversity and plurality of thought, Saitô proclaims that there is no such thing as dangerous thought when people are allowed to express their opinions freely. "Dangerous thought begins to grow only when the popular will is oppressed and rights are threatened."<sup>97</sup>

Furthermore Saitô has to defend universal suffrage against the fear of change, which Saitô asserts is irrational. Some also reject universal suffrage as a foreign import. Yet according to Saitô, Japanese history is full of such imports, and its political system will not function if some aspects of it are rejected as "foreign". The use of such concepts reduces necessary debate, and politicians should not exploit Japanese particularism.<sup>98</sup>

Similarly Saitô attacks a proposal made by one of the opposition parties, Seiyû Hontô, for giving voting rights only to family heads. "The basic unit of the state is the individual", Saitô says, echoing Fukuzawa. "National progress will be possible only when the individual can act spontaneously and exercise his political abilities as much as possible."<sup>99</sup>

When Saitô made his speech of 1925, male universal suffrage was widely supported, even among nationalists such as Uesugi. For them, extending the suffrage will allow the people and the emperor to become closer and thus national unity will be reinforced. However, for Saitô, national unity derives from individuals who act freely and spontaneously. Unity should not and cannot be imposed on the people. People need to be persuaded rationally before they support a policy, and politicians are responsible for such explanation, and only universal suffrage allows this process of rational

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<sup>96</sup> Dôshikai was one of several organisations formed around this time to counter such reformist organisations as Reimeikai (See Saitô, *Ôshû Shokoku no...*, p. 23, and *Kenpô oyobi Seijironshû*, p. 94). Among its sympathisers was Uesugi Shinkichi.

<sup>97</sup> TGSGS, vol. 46, p. 479.

<sup>98</sup> *ibid.*, p. 480.

<sup>99</sup> *ibid.*, p. 481.

persuasion to develop. Thus Saitô says, “to direct a people, factual and logical substance is necessary. Any attempt to create the opinion of the people by abusing radical language, without presenting objective facts and logical substance, is destined to fail.”<sup>100</sup>

Saitô therefore supports universal suffrage as a step towards creating an “agreed” national unity. For this purpose open discussion is essential. Countering the criticism that universal suffrage would damage family unity, Saitô would say: discussion should be encouraged even between father and son. The very aim of Parliament is discussion, and difference of opinion does not damage the system.

However, in this 1925 speech Saitô dropped his previous support for a two-party system. Again global trends provide the mainstay of his claim. “Given social progress and the complexity of society, politics based on confrontation between two parties is impractical and unachievable.”<sup>101</sup> He supports proportional representation, but thinks that its introduction requires more study. For the present we should be content with multi-seat constituencies because they offer a kind of proportional system. So during this session, in addition to the passage of male universal suffrage, the single-seat constituency system introduced by the Hara Cabinet was replaced by the new constituencies.

Kamizawa Sôichirô regards this 1924-25 parliamentary session as an “epoch-making moment” in Japan’s parliamentary history with regard to the depth and breadth of debate.<sup>102</sup> In this regard, Saitô made a strong contribution, adding his voice to a movement well under way. Thus calls for universal suffrage had grown after World War I. The Rice Riots in 1918 were also a catalyst for an outburst of public grievance against restricted political rights: already in early 1919 students and workers were demonstrating at various parts of the country seeking universal suffrage.<sup>103</sup> Kenseikai, to which Saitô belonged, also began to discuss a possible suffrage bill in that year. In February 1920, public meetings calling for universal suffrage were common, attracting a large number of people on a “scale that had never been and would never be seen in the pre-war

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<sup>100</sup> *ibid.*, p. 481.

<sup>101</sup> *ibid.*, p. 484.

<sup>102</sup> Kamizawa Sôichirô, “Saitô Takao ron-Seiji no Rinri”, *Waseda Shogaku*, vol. 223 (July 1971), p. 156.

<sup>103</sup> Matsuo Takayoshi, *Fûtsûsenkyo Seido Seiritsushi no Kenkyû*, pp. 140-1

period".<sup>104</sup> Saitô's 1920 speech was made in such an atmosphere. Yet he was clearly listening to people outside Parliament, since his party's formal proposal included a clause that only men who were economically independent could vote. Saitô was one of the few radicals who advocated male universal suffrage without such a clause.<sup>105</sup> Saitô at this time was sharpening his position in response to people's growing demands.

After Saitô's defeat in the 1920 general election, local youth gathered around him to support his return to Parliament. From now on, his main supporters were voluntary and local. All were influenced by socialist thought more or less. One organised a reading group of socialist literature, while one had attended a labour school run by Kagawa Toyohiko, a socialist reformer and Sakai's contemporary. They became Saitô's lasting support base in the constituency, even after his expulsion from Parliament.<sup>106</sup>

Itô Yukio attributes Saitô's 1924 victory to the dissemination of liberal thought during the Taishô period. The people had become more aware of their rights because of better education and the growing circulation of socialist and liberal magazines, as well as the general discontent with Seiyûkai's economic policy amid the post-war recession.<sup>107</sup> On returning to Parliament, Saitô pushed through the introduction of male universal suffrage as the leader of the supra-party parliamentary committee that drafted the bill.<sup>108</sup>

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<sup>104</sup> *ibid.*, p. 152. On 11 February alone, more than 30,000 people attended such meetings held in Tokyo.

<sup>105</sup> Itô Yukio, "Saitô Seiji no Teichaku", in Banno and Miyachi (eds.), *Nihon Kindaishi ni okeru Tenkanki no Kenkyû*, p. 273.

<sup>106</sup> Kusayanagi, *Saitô Takao*, pp. 231-6. This does not mean that Saitô dispensed with financial support from newly created capital. When he successfully ran for the House of Representatives from his native Hyôgo Prefecture in 1912, a large portion of his campaign funds came from Hara Rokurô, a successful businessman who also hailed from Hyôgo. Although Hara's career was closely attached to governmental commercial and industry policy such as his involvement in the operation of the Yokohama Specie Bank and in the establishment of the Bank of Taiwan and the Industrial Bank of Japan, his motivation to support Saitô does not seem to have been purely economic. Born in 1842, Hara had been involved in the anti-bakufu movement, and was sent to the United States and Britain to study economics by the new government after the Restoration. The practice seems to have been common that those who had achieved some success supported younger people who came from the same region as themselves. The Hara family continued to support Saitô even after Rokurô's death in 1933. See also Matsumoto, *op. cit.*, pp. 168-70.

<sup>107</sup> Itô, *op. cit.*, p. 274.

<sup>108</sup> *ibid.*, p. 309, and also Matsuo, *Fûtsûsenkyo Seido Seiritsushi no Kenkyû*, p. 307.

However, Saitô had to be content with a significant watering down of the bill because of power relations. When the government finally adopted the bill in December 1924, it included a clause that eliminated those who received public financial support from eligibility. Matsuo speculates that the government caved in under pressure from the Sûmitsuin.<sup>109</sup> More damagingly, the passage of the bill was accompanied by the introduction of the Peace Preservation Law. Saitô had supported a two-party system and then universal suffrage because he believed that they would lead to a strong and solid government without sacrificing the liberty of the individual. He was partially successful, with more people brought into the process of decision making than ever before. However, the introduction of another oppressive law also expanded the domain of discretionary power, which he had to confront from now on.

Saitô had long understood that along with the limitation of power, political responsibility can also help to ensure the liberty of the individual. Thus if power is exercised by a person over others, that person is responsible for its exercise. The exercise of power and responsibility are thus inseparable. In 1915, Saitô says, "As long as they take the whole responsibility politically, state ministers must be allowed to exercise their expertise freely."<sup>110</sup>

Out of this power-responsibility linkage, Saitô quickly criticises the Sûmitsuin and *genrô* for being unaccountable, and thus unconstitutional. "State ministers' responsibility may be questioned by Parliament, but no one questions that of the Sûmitsuin.... In reality the Sûmitsuin is not a constitutional advisory organ, but an institution that prevents the normal operation of constitutional politics."<sup>111</sup> *Genrô* is also a body that is above the Cabinet and is unaccountable for its own decisions. But Saitô concedes that *genrô* will play the important role of choosing the next prime minister as long as political parties are not capable of transferring power themselves.<sup>112</sup>

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<sup>109</sup> Matsuo, *Fûtsûsenkyo Seido Seiritsushi no Kenkyû*, p. 307.

<sup>110</sup> Saitô, *Kenpô oyobi Seijironshû*, p. 25.

<sup>111</sup> *ibid.*, p. 28.

<sup>112</sup> *ibid.*, p. 34.



The House of Peers is also the chief source of Parliament's disunity, thus of political anarchy, and therefore is an obstacle to national politics.<sup>113</sup> But Saitô also concedes that the problem stems from the weaknesses of the House of Representatives, and that the public does not see it as its true representative.

We have seen that in his speech of 1920, Saitô severely criticised the country's political system for lacking a solid framework in which party politics could function. He told Parliament: "Our government does not have central force. But that is not the only problem. There are various kinds of forces, which are unconstitutional and unjust, which operate here and there, and which compete with each other both openly and secretly. There is no national power that can overcome and unify these disparate forces. This is one major defect of this country's politics."<sup>114</sup> Saitô hoped that the introduction of universal male suffrage would solve this problem: a solid platform on which government could claim both authority and legitimacy.

The application of universal male suffrage in 1928 did not solve the problem instantaneously. On the contrary, the Home Affairs Ministry responded to the first general election to be held under universal male suffrage with a large-scale crackdown on communists. Meanwhile, the growing anti-Japanese sentiments in China and the move led by the Nationalist Party to unify the country threatened the military establishment. In May 1927 Prime Minister Tanaka Giichi sent troops to Shandong to support the pro-Japanese warlord Zhang Zuolin. Throughout 1928, Japanese and Chinese troops clashed on various occasions. It is this beleaguered government, aggressive both towards its own people and the country's interests abroad that Saitô sees as deliberately undermining parliamentary politics. By acting in this way, the government was abandoning a key prerequisite for the operation of government: the need to assert its authority through the demonstration of its legitimacy, through the trust of the people, and adherence to parliamentary procedures. He is particularly concerned with the government's use of "crisis" to push through unpopular policy. For a

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<sup>113</sup> *ibid.*, p. 36.

<sup>114</sup> TGSGS, vol. 36, p. 317.

government incapable of claiming legitimacy except through “expediency” is inherently weak, and unable to steer the country.

Saitô articulated his concern about the misuse of ideology and the deliberate undermining of constitutional conventions in a parliamentary interpellation targeting Prime Minister Tanaka, made on 22 January 1929.

In his speech Saitô frequently invoked the theme of accountability in order to criticise Tanaka. Saitô dealt with accountability in the following areas: government’s intervention in election campaigns, Tanaka’s decision to appoint a controversial businessman-turned-politician to be home affairs minister, government’s spending practices without parliamentary sanction, and the use of an imperial ordinance to revise the Peace Preservation Law. It is this last issue where Saitô’s arguments were most convincing. For “expediency” must be objectively explained, and the use of an emergency imperial ordinance (*chokurei*) is only acceptable in order to maintain the public safety, to cope with a truly urgent situation, or when Parliament is in recess.

In fact the government had submitted its bill to amend the law on only the fifth day of the previous two-week extraordinary session, leaving little time for debate. Saitô alleged that the government could have extended the session so that Parliament could discuss the bill, but it had decided not to do so because “it was concerned with the widespread opposition that encompassed the public (*kokuron*), some members of the government and the ruling party [Seiyûkai], and also the Privy Council”. The government then dithered for two months, before finally invoking *chokurei* to revise the law. “Given the circumstances”, said Saitô, “it is hard to believe there is an urgent situation.”<sup>115</sup>

Saitô was not convinced by the government’s explanation that a tighter law was necessary in order to prevent communists from gaining power, because he did not believe in such a danger. Certainly communists did not have the influence to overturn the fabric of society: “Observing the country’s situation now, we cannot agree with the government’s propagandistic statement warning us against the arrival of an era of terror

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<sup>115</sup> TGSGS, vol. 56, p. 28.

because of the unstoppable dissemination of communism...”<sup>116</sup> Instead by invoking an imperial ordinance to tighten the law, the government is causing far greater damage, undermining the very foundation of constitutional government. Knowing that Parliament would oppose the bill if it was normally presented, “the government has ignored public opinion and Parliament, and enacted a law that allows it to charge people with the death penalty. This is nothing but autocracy in the guise of constitutional government”.<sup>117</sup> Saitô warns that such a law will promote neither a complaisant people nor the public peace. On the contrary oppressive government will alienate the people, and germinate radical resistance. Here Saitô is again touching on authority and legitimacy, and linking them with public opinion, *min'i*. Nevertheless, despite his and others’ criticisms, the Seiyûkai-dominated Parliament approved the revision retrospectively when the government sought its approval as required by the Constitution.

This use of an imperial ordinance to tighten the Peace Preservation Law reflected the government’s loss of authority on all fronts. Frustrated by Tanaka’s reconciliatory policy, the Japanese Kwantung Army had assassinated the Manchurian warlord Zhang Zuolin in June 1928. Saionji, a former prime minister and one of the *genrô*, told Prime Minister Tanaka that it was necessary to mete out severe punishments on the military staff in order to maintain international trust in Japan, to remind the military that its undisciplined behaviour would be punished, and to improve the country’s relationship with China.<sup>118</sup> Persuaded by Saionji, Tanaka demanded stronger punishments for those involved in killing Zhang, but those supporting the military, including even some members of his own party, resisted strongly. Confronted by a hostile Parliament, Tanaka was helpless to assert his authority.<sup>119</sup>

Thus, without clarifying the question of responsibility, Tanaka was forced to resign because neither the military nor Parliament supported him. Masuda Tomoko

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<sup>116</sup> *ibid.*, p. 29.

<sup>117</sup> *ibid.*, p. 29.

<sup>118</sup> Quoted by Masuda, *Tennôsei to Kokka*, p. 139.

<sup>119</sup> His Transport Minister Ogawa Heikichi advised Tanaka not to disclose Japanese involvement in the killing of Zhang in Parliament, because it would trigger intense and widespread attack on the Cabinet. Some may resort to “terrorist” action, regarding such a disclosure as “treason”. Parliament may demand the prime minister’s resignation. “Punishment of the Army is not worth such sacrifice”, quoted by Masuda, *ibid.*, p. 141.

speculates that if Tanaka had brought the issue to Parliament and the latter had supported the prime minister's position, the practice of subjecting the supreme military command to the Cabinet's jurisdiction might have taken root.<sup>120</sup> With Tanaka's resignation, his demand that those involved in the killing of Zhang be tried at court martial was ignored. Thus a crucial opportunity for government to assert authority based on the backing of Parliament was lost.

Party government survived when Saionji appointed Minseitô's Hamaguchi Osachi as the next prime minister. However, the problem of divided government merely continued to grow, and Japan's position in Manchuria became all the more fragile in the face of growing Chinese nationalism. The Hamaguchi government managed to sign the London Naval Treaty in 1930 despite fierce opposition from the military, but the degree of manoeuvring to which the government had to resort in order to counter opposition—even invoking the emperor's discretionary power (*taiken*)—reveals the further crumbling of constitutional government. The Cabinet was no longer able to contain the competing forces unless it invoked the emperor's all-inclusive higher authority. Masuda asserts that such manoeuvring exacerbated the ideological and institutional divisions of government, prompting calls for the termination of constitutional and parliamentary government altogether.<sup>121</sup>

Thus pre-war party politics in Japan could not survive the ideological and institutional divide of government, which both shaped and relied on the discretionary nature of executive power. Yet the parties themselves were also partly responsible for this decline.

The Japanese parties bickered with each other constantly. Saitô was not immune to such temptation. Thus in a speech of 22 March 1932, Saitô censured Prime Minister Inukai for staying in power despite the Sakurada Gate Incident earlier in the year, a failed attempt to assassinate the emperor by a Korean resident resentful of discrimination.<sup>122</sup> Inukai had tendered a letter of resignation, which was rejected by the

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<sup>120</sup> *ibid.*, p. 141.

<sup>121</sup> *ibid.*, p. 178.

<sup>122</sup> TGSGS, vol. 57, pp. 32-6.

<sup>123</sup> Masuda, *op. cit.*, p. 192.



emperor's aides concerned with the discipline of the military.<sup>123</sup> Saitô was strongly partisan, and unusually emotive. He criticises Inukai for failing in his responsibility to support the emperor. The speech was intended to oust Inukai, whose government was already facing serious internal problems. Yet Inukai's immediate aim was to end the escalation of the Manchurian Incident, as he explains in his reply to Saitô.<sup>124</sup> His Cabinet had decided not to recognise the Manchukuo based on international law 10 days earlier, although a major faction of his party was calling for its approval and also for the country's withdrawal from the League of Nations.<sup>125</sup> Saitô in his speech inadvertently contributed to the undermining of Inukai's efforts to contain the runaway military and to resume civilian control. The assassination of Inukai two months later marked the end of party politics in pre-war Japan. Although Saitô was critical of the "non-elective forces" that tried to bring down the Cabinet, Saitô appears to have been too little aware of his own party's role in the undoing of party politics as a whole.

According to Takahashi Susumu and Miyazaki Ryûji, the elimination of Parliament and thus the electorate from the procedures by which new prime ministers were appointed was responsible for the eventual fall of parties. It was extremely rare in pre-war politics for a new prime minister to be selected as the result of a general election. Normally, most general elections were held several months after a new Cabinet was formed. After the formation of a Cabinet, its leaders would replace many local governors with their supporters in preparation for an election, and the new governors would interfere in election campaigns. As a result, it was very difficult for an opposition party to take power through elections. Thus for the opposition it was important not only to exaggerate any blunder that the ruling party had made but also to collude with those non-elective bodies hostile towards it. This practice continued even during the time of the two-party system of Seiyûkai and Minseitô. Once again the biggest casualty of such arrangements was the loss of public trust: "Both Seiyûkai and Minseitô attacked the other party for any error that it had made to the extent that such an attack would appear

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<sup>124</sup> TGS GS, vol. 57, p. 37.

<sup>125</sup> Masuda, *op. cit.*, p. 213, and Katô Yôko, "5-15 Jiken", in Inoue Mitsusada *et al.* (eds.), *Nihon Rekishi Taikei*, vol. 5, *Kindai* 2 (Tokyo: Yamakawa Shuppan, 1989), p. 428.



to be a total denial of the other's governing ability. In the eyes of the public, such mutual in-fighting created the impression that both parties were incapable of governing... thus alienating the electorate."<sup>126</sup> In addition, even during the two-party system, parties failed to compete against each other over policy. "This failure prepared for the decline of party politics. It may not have been linked directly to the rise of an anti-party force, but it diluted public support."<sup>127</sup>

Furthermore, the rapidly expanding role of government also hindered party politics. As we have seen, political parties were handicapped from the very start. When the state was expanding as an ideological and material force, as the planner and financier of various local projects, parties as a spontaneous unity of individuals who shared a political creed found it difficult to develop. With "no great organised parties" as in France, candidates had to secure "local influence and personal interests" in order to be elected.<sup>128</sup> They had to act "as a kind of universal business agent" for their constituencies. This situation tended to prevent them forming a party based on a shared political creed.

In 1915, Saitô had already complained of the split between national and local politics in the electoral districts.<sup>129</sup> Thus people tended to support a candidate or a party out of personal connection or in the belief that a party will bring local benefits, such as a new railway, port, or similar improved infrastructure. "Because people are elected to the House of Representatives from such constituencies, a general election is not connected to national politics. Even if government dissolves Parliament seeking the electorate's verdict, campaign debates will not be focused."<sup>130</sup> This problem of party unity was compounded by government's interference in campaigns, regardless of which party was in power. Saitô concedes that in view of those problems, and without the guarantee of free elections, it is difficult for elections to connect with the popular will.

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<sup>126</sup> Takahashi Susumu and Miyazaki Ryûji, "Seitô Seiji no Teichaku to Hôkai", in Banno and Miyachi (eds.), *Nihon Kindaishi ni okeru Tenkanki no Kenkyû*, p. 244.

<sup>127</sup> *ibid.*, p. 245.

<sup>128</sup> Lawrence Lowell, *Governments and Parties in Continental Europe*, vol.1, pp.132-35. Here Lowell discusses French local politics.

<sup>129</sup> Saitô, *Kenpô oyobi Seijironshû*, p. 147.

<sup>130</sup> *ibid.*, pp. 148-9.

In this way parties were both culprits and victims of the political climate. Saitô, however, refused to take up specific local interests, unlike other politicians.<sup>131</sup> Instead, he discussed national issues such as electoral laws, protection of human rights, and constitutional procedures. His constituency clearly supported their academic representative, but not for the local interests that he might promote.

Hence “*kokumin seiji*” always constituted Saitô’s political creed. It is this vision that survived throughout his life, and prompted him to confront the government in his crucial speech of 1940. In 1941, when he was out of Parliament, he returned to the same theme: “The most natural and safest way of conducting politics to ensure social and intellectual progress is to allow the people to take part. It is an undeniable fact that human history is moving in that direction, and no force can stop it. In time of war or when rapid deployment of national force is necessary, a political system antithetical to that direction may emerge, but it is merely temporary. Anyone who aims at becoming a politician should not forget this fact.”<sup>132</sup> His vision was far-sighted and based on a fundamental trust in human reason. Yet when he wrote this passage, he had witnessed the transformation of government into an enormous system of administration with extensive power over people’s lives. Now the government was reinforcing its war-time measures: the National Mobilisation Law, which was introduced in 1938, was revised to increase government autocracy, the Peace Preservation Law was also revised to allow the authorities to detain civilians in “preventing crime” (*yobô kôkin*), and the National Defence and Security Law (*kokubô hoanhô*) was newly introduced. Parliament was still in operation, but the parties were defunct. Saitô had witnessed the annihilation of the constitutional framework, which he had tried to build throughout his life.

Nevertheless pre-war parliamentary politics in Japan owes its growth to members of Parliament such as Saitô who clearly understood the tension between national goals and individual liberties and the role of Parliament in negotiating that tension. Saitô’s political behaviour was sometimes blinkered, yet precisely because the Japanese

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<sup>131</sup> See Kusayanagi, *Saitô Takao*, p. 76.

<sup>132</sup> Saitô, “Hijôji ni shosuru Gikai Seiji no Tokushitsu”, *Saitô Takao Seijironshû* (Tokyo: Shinjinbutsu Ōraisha, 1994), p. 119. He wrote the article in May 1941, but it was published only posthumously.

parliamentary system was in process of formation, a creed such as his became indispensable in the search for acceptable representative government.

#### **4.4. Saitô and totalitarianism: the defence of constitutionalism**

In 1940, the German legal expert Ernst Fraenkel attempted to explain how the German totalitarian regime grew out of the constitutional arrangements of the Weimar Republic. He observed the gradual and systematic abolition of the rule of law in various court rulings and legal procedures, a process whereby the *Rechtsstaat* (legal state) was subverted by political expediency. Traditional “rational” Natural Law and *idées générales* were denied. Instead, “people’s” law and ethnicity became the central principles of legal order, thus subjugating that order to particularist German interests. Law became a “measure”, applied for immediate political purposes rather than for protecting people’s rights, which were no longer regarded as universal. “There are no legal rules governing the political sphere. It is regulated by arbitrary measures (*Massnahmen*), in which the dominant officials exercise their discretionary prerogatives”.<sup>133</sup> Fraenkel calls such a system the “Prerogative State”. In National-Socialist Germany, the “Prerogative State” co-existed with the “Normative State”, which was “an administrative body endowed with elaborate powers for safeguarding the legal order as expressed in statutes, decisions of the courts, and activities of the administrative agencies”. In this dual structure the “Prerogative State” subverted the “Normative State”, facilitating the rise of Nazi dictatorship.

Saitô observed a similar development in Japan, the incremental collapse of the state structure. The driving force of this development was the military, whose expansionist ambitions received a significant boost from the Manchurian Incident. The military was by no means united, yet its ideological and organisational outlook was

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<sup>133</sup> Ernst Fraenkel, *The Dual State: A Contribution to the History of Dictatorship* (New York: Oxford University Press, 1941), p. 3.

superimposed on the existing state through various steps. This process also involved the demise of party politics.

In Japan the practice by which the largest party in Parliament formed government came to an abrupt end in 1932 when Inukai was assassinated. A party Cabinet did not re-emerge until the end of World War II. During the nine-year period between the assassination of Inukai and Japan's attack on Pearl Harbour in December 1941, nine men became prime minister, six of them being army generals or navy admirals. The Cabinets led by those men were all weak, and they were ousted or forced to resign when they failed to rein in the military's ever-radicalising assertiveness.<sup>134</sup> The frequent turnover of leadership implies both the disappearance of a firm locus of power and increasing incoherence in policy, which Saitô exposed in Parliament.

Saitô's decades-old warning that government not based on popular support was ill-founded and unable to command the necessary authority had become clear to many critics. Thus in January 1935 Minobe Tatsukichi, just a month before his Emperor-as-Organ theory was attacked in the House of Peers, had observed the absence of centripetal power capable of commanding authority as a fatal weakness of the political system of the day. The decisive event was the Manchurian Incident, for it had precipitated the new forces, led by the military and the "new" bureaucrats, that denied party politics.<sup>135</sup>

Recognising decline, Saitô made several important speeches during this period, warning against the consequences of destroying the political system that he and others had striven to build and preserve. None of the speeches altered the general course of the country's expansion policy. Nevertheless, they record the steady growth of a totalitarian system eclipsing the constitutional framework.

According to Saitô, the first clear move to destroy the structure came from the outright rejection of a party Cabinet by the military after the assassination of Prime

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<sup>134</sup> Even Tōjō Hideki, the last of these men who took the country to war, was unable to harness conflicting opinions. He stepped down when Japan began to lose the war, but his resignation came a year before Japan's surrender in 1945.

<sup>135</sup> Minobe, "Gendai Seikyoku no Tenbō", the *Tokyo Asahi Shimbun*, 3 and 4 January 1935 (part one and two).

Minister Inukai. In a speech of January 1935 Saitô criticised the military's policy statement issued three months earlier as militaristic "propaganda".

This 57-page pamphlet criticised many aspects of everyday life, including the destructive aspects of capitalism. Capitalism, it argued, was the root cause of the plight of the farming communities, which were exploited by the cities, capitalism's embodiment. The gap between rich and poor was caused by the laissez-faire economy, and the people's selfish pursuit of material profits undermined the commonweal. Echoing national socialism, which was then gaining support in Japan, the pamphlet called for the state's further intervention in economic affairs and for civic education in order to rectify social malaise. It appeared when the plight of the farming communities had become hotly debated in Parliament. Poor harvests caused by a succession of natural disasters had aggravated the strains of the communities which had not recovered from the impact of the global recession.

Yet what angered and alarmed old guard liberals such as Saitô and Minobe was the military's implication that military force was more effective than any other means to solve such flaws in society. The pamphlet portrays military expansion as the final panacea of all those social ills, both material and spiritual, and elevates the role of the military to that of the chief guardian of such necessary national endeavour.

Thus in his speech, Saitô attempts to contradict the military's demands for a militarily expedient state with his formulation of three threats that the people now face: a threat to their economic well-being, a threat to their freedoms, and a threat of war.

He acknowledges that the present economic system has created various forms of inequality and misery in society. Poverty is inevitable under a free economy, but government has obligations to support those who fall into it because of unavoidable circumstances. Yet he is opposed to the pamphlet's call for drastic reform of the economic system, which he finds untenable. Like any other aspect of society, the economic system is complex. Policy ought to be practical and achievable. "It is a pipe dream to think that a better system can be implemented quickly", Saitô says.

His alternative measures include the reduction of military spending, as well as tax reform so that wealth will be more fairly distributed. It is a contradiction to call for a



fairer economic system and more military spending simultaneously. In fact, government revenues allocated to the Army and Navy go to a small number of manufacturers, leaving small-scale independent entrepreneurs short of funds and work. Attacking this military-sponsored “siphoning” structure, Saitô says, “We cannot deny that at least several millions of yen each year are spent on manufacturing warships, weapons and ammunition. Where does the cash go? It goes to a very small number of businessmen and manufacturers although the majority of the people share the burden of military spending... That is, a very small minority is making huge profits, which does not help to alleviate the widespread poverty at all.”<sup>136</sup>

For Saitô, military leadership is unacceptable, because his vision of government entails active interaction between the people and government. He sees the source of national stability to exist in the people’s trust in government, their sense of security in everyday life, and spontaneous feelings of solidarity. A change in government policy, or any forced ideology, cannot produce such fundamental components of national unity. Thus, “No nation is stable without a people feeling secure in their daily living... It is a mere dream to try to mould national morale without providing the people with food, clothing, and housing.”<sup>137</sup> Any attempt to produce national sentiment through artificial means is destined to fail.

Accordingly Saitô sees the emergence of authoritarian government in the military’s new assertiveness. And in two months’ time (March 1935), Japan’s withdrawal from the League of Nations would become valid. The government was about to take part in multilateral talks about the London Naval Treaty, hoping that the treaty would be revised to ensure Japan’s equal share of armaments. With the anticipation of the termination of the treaty, some military leaders were desperate to secure government favour and realise a sharp increase in military spending. Such demands met strong resistance from the Finance Ministry as well as from members of Parliament.<sup>138</sup> Thus the

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<sup>136</sup> TGSGS, vol. 64, p. 68.

<sup>137</sup> *ibid.*, pp. 68-9.

<sup>138</sup> *Rikken Minseitôshi*, vol. 2, pp. 953-7.

pamphlet appeared when the military was propagating the idea of an “imminent crisis” with a clear political motive.

The new military assertiveness came with a new assertiveness in the bureaucracy. Just a day before Saitô’s speech, Minobe, a member of the House of Peers, had questioned the government about the treatment of suspects in the Teijin Incident.<sup>139</sup> Echoing such an attack, Saitô also mentions the case and says: “Dictatorship is a primitive form of government, not a civilised one. If it abuses its authority and suppresses people’s freedom, government is uncivilised.”<sup>140</sup>

Saitô concludes his speech with his defence of a party Cabinet, warning the government about the impossibility of its exercising real authority because it is not based on genuine public support: “The Cabinet is the central institution of politics, and the highest organ. It may not be so under despotism, but it is so under constitutionalism. In other words, only the Cabinet that enjoys the support of the largest party in Parliament, which represents the people, can conduct politics... In our time political opinion has no credibility if it does not have the support of the people and has no engagement with the people. Such an opinion is merely noise.”<sup>141</sup> Saitô sees the pamphlet as noise also. In real politics, such “noise” may have strong influence. Yet Saitô is concerned with the negation of the governmental forms underlain by the Constitution and by the increasing intervention of the “non-elective” bodies.

Saitô’s concern with the preservation of the country’s constitutional system intensified with the attempted coup by young officers on 26 February 1936, which involved 1,400 soldiers. Thus he questioned the military’s self-discipline in an extraordinary parliamentary session in May. He blamed the dissemination of radical thought, especially of the right, among those officers, and also the military leaders’

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<sup>139</sup> Historians believe that the case was most likely fabricated by government prosecutors instructed by the pro-military former Justice Minister Hiranuma Kiichirô, although they have not found clear evidence to support the claim. In December 1937 the Tokyo District Court found all 16 defendants not guilty, because of “no evidence whatsoever”. The prosecution did not appeal. See Sasaki Takashi, “Saitô Naikaku kara Okada Naikaku e”, in Inoue Mitsusada *et al.* (eds.), *Nihon Rekishi Taikei*, vol. 5, *Kindai* 2, pp. 486-7.

<sup>140</sup> TSGS, vol. 64, p. 69.

<sup>141</sup> *ibid.*, p. 72.

failure to punish those involved in similar incidents in the past as catalysts for the escalation of violence.

Since the Manchurian Incident, Saitô says, young officers have begun to advocate radical reform of the country's political system. They honestly believe in the urgent need for change. But they are ignorant of the complexity of society. Their thoughts are simple, and therefore dangerous.

Saitô believes that the country's constitutional system is sound. What the country needs is not radical change in the system itself, but in the way people operate it. Although he carefully avoids straightforward repudiation, Saitô is implying that party politics needs to be restored in place of military leadership. Furthermore, under the present system, the Cabinet should be able to command authority, but only if it possesses a unified, coherent policy. In this respect, the government's policy is revealing clear contradictions. For it is calling for peaceful settlement of the international disputes, while it continues to increase military spending exorbitantly. As a result, more pressing and basic domestic issues, such as educational reforms, are neglected. Saitô identifies the assertive military as the source of such imbalance. Linking inconsistency and the neglect of domestic problems, Saitô is now dissecting the emerging totalitarian regime, which he sees as taking politics away from society.

Such disengagement is also taking place in the application of the law, thus undermining the judicature as a whole, according to Saitô. Along with the destructive influence of radicalism on young officers, some leaders' tacit support for their activities is responsible for their subversions of the law. The country has experienced a series of attempted coups or assassinations by officers, including the March Incident and October Incident in 1931, and the assassination of Inukai on 15 May 1932. The military's failure to mete out heavy punishment in the original case has resulted in the outbreak of others, perpetuating the cycle of violence. Thus the military as a whole is responsible for accelerating the demise of normal constitutional procedures by treating itself as above the law.

Saitô points out that after the assassination of Inukai, a public prosecutor had demanded the death penalty for the three main culprits, who were all military officers.

They were tried at a military court, and sentenced to a maximum of 15 years in prison, although military law demands the heaviest punishment if it is recognised as treason. On the other hand, a civilian collaborator, who was involved in a failed attempt to blow up a power station as part of the group's concerted attempt to unseat the present government, was given a life sentence. "They were all involved in the same plot... Some were given light sentences because they were military officers and tried at a military court, although they had assassinated the prime minister. Others were given heavier sentences because they were civilians and tried at an ordinary court, although their crime is that they had helped to place a bomb which never exploded."<sup>142</sup>

Thus military and ordinary courts may be governed by different laws. But both are under state laws, which define treason as one of the most serious of crimes, punishable with the death penalty. Handing down such lenient punishment to its own members, the military is rejecting general law and subverting the existing legal order. "Trials, which are carried out in the name of the emperor, must be independent, sacred, and fair... If the ruling depends on the status of the defendant and the court, can the state exercise its judicature properly?"<sup>143</sup>

Saitô is also concerned with the discipline of the military as a whole. He asks, "Are there any military leaders who psychologically supported those rebellious officers? At least the public suspect such involvement."<sup>144</sup> Indeed the military promptly removed from active duty seven generals thought to be close to the young officers.<sup>145</sup> Nevertheless, the February 26<sup>th</sup> Incident exposed the serious disunity of the military and encouraged the rise of a group seeking a "legal" revolution in co-operation with the bureaucrats.

Studying the emergence of Nazi dictatorship within the framework of the Weimar Constitution, Fraenkel says that there are only two ways for non-elective groups to take power in a constitutional system: "Either (a) to establish *praeter legem* a political

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<sup>142</sup> TGSGS, vol. 66, p. 46.

<sup>143</sup> *ibid.*, p. 46.

<sup>144</sup> *ibid.*, p. 47.

<sup>145</sup> Katô Yôko, "2.26 Jiken to Hirota, Hayashi Naikaku", in Inoue Mitsusada *et al.* (eds.), *Nihon Rekishi Taikei*, vol. 5, *Kindai* 2, p. 500. These generals included Mazaki Jinzaburô and Araki Sadao.

power outside the legal order and to revise the constitution with the aim of establishing the authoritarian *Machtstaat*, or (b) to substitute *contra legem* a dictatorial state for the rational constitution of the *Rechtsstaat*. This dictatorship would have to be detached from the traditional limits of the monarchy and from the rational limits of the republic.”<sup>146</sup> Nazi Germany took the second way. In Japan, when Saitô made his speech, hegemonic power was also emerging in a similar fashion.

In this respect, the February 26<sup>th</sup> Incident was a watershed. The failed coup was staged by a radical faction of the military, the Kôdôha (Imperial Way Faction), which tried to realise military leadership through direct action. After their failure, the Tôseiha (Control Faction), which favoured military leadership through “legitimate” control of the existing institutions, gained power.<sup>147</sup> The Hirota Cabinet backed by the Tôsei Faction quickly executed those involved in the February 26<sup>th</sup> Incident, after a swift court ruling. This trial was conducted behind closed doors, unlike the previous military courts, which had been open to the public and which had allowed Saitô to quote the prosecution statements amply during his speech. After the February 26<sup>th</sup> Incident, interventions by Parliament became all the more difficult.

Thus when Saitô delivered his speech in May 1936, political parties were clearly in retreat. The February 26<sup>th</sup> Incident had taken place shortly after Minseitô, to which Saitô belonged, became the largest party in Parliament after a general election. But the Okada Cabinet was a hotchpotch of various members from the two main parties and the House of Peers, bureaucrats, and business representatives, which the *genrô* hoped could check the military. The incident forced the cabinet to resign en masse. Saionji and other *genrô* appointed the diplomat Hirota Kôki as prime minister, and once again the election results were ignored, further sidelining the parties.

Military intervention now increased in government, thus further weakening the Cabinet’s ability to command authority and to maintain policy coherence. To maintain unity, the Hirota Cabinet had to comply with the military’s demands that Japan’s vested interests overseas, particularly those in North China and Manchuria, be preserved. Yet to

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<sup>146</sup> Fraenkel, *The Dual State*, p. 169.

<sup>147</sup> Hasegawa Masayasu, “Tôchi Kôzô”, *KNKH*, vol. 3, 1958, pp. 292-3.



do so became increasingly difficult in the face of Chinese unification and rising anti-Japanese sentiment. Dealing with the Soviet Union was another problem. The government was expected to take measures to prevent the spread of communism and also preserve the country's interests in Manchuria and Mongolia, as Japanese and Soviet armies began to clash in areas where the borders between the Soviet Union and Mongolia were not clear. On the other hand, Japan's exports were booming, thanks to the depreciation of the yen, but the boom was also causing friction with other industrial countries. At the very moment when the country needed skilled diplomacy, the Cabinet could not demonstrate it because of its rigid adherence to expansionist principles, and its subjection to the military. The Cabinet resigned in January 1937, when the Army, which had demanded an immediate dissolution of Parliament, was at loggerheads with the Navy, which had wanted to see a budget passed to boost military spending. Hirota may have tried to check the military, yet his regime was also responsible for its further advance.

In this way the rise of the military coincided with the steady undermining of party politics. Bureaucrats played a central role in this development. In May 1935 the Home Affairs Ministry launched a nation-wide campaign for "clean" elections (*senkyo shukusei*), issuing an ordinance that stipulated that each prefecture set up a committee to supervise them. Such a trend was already discernible when the election law was revised for the House of Representatives in 1934 to tighten the restrictions on campaigns. The revision was criticised not only by professional politicians but also by liberal intellectuals such as Minobe as discouraging public participation in politics. Although he had to compromise with the bureaucrats as vice home minister when the law was revised, Saitô resisted open intervention in campaigns by prefectural governors.<sup>148</sup> Yet the ordinance of 1935 strengthened the bureaucrats' involvement,<sup>149</sup> and politicians

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<sup>148</sup> According to Saitô, government intervention in campaigns and "guilt by association" are against the principles of free elections, in which individuals take part spontaneously. See Saitô, *Senkyohô Kaisei oyobi Seitô Seijiron* (Tokyo: Minseisha, 1933), pp. 26-9, 64.

<sup>149</sup> Soma Masao, *Nihon Senkyo Keihatsushi* (Tokyo: Akaruku Tadashi Senkyo Suishin Zenkoku Kyôgikai, 1972), pp. 199-200. Also, see Itô Yukio, "Fuashizumuki no Senkyohô Kaisei Mondai", *Nihonshi Kenkyû*, no. 212, 1980, pp. 57-8.

strongly resisted the intervention.<sup>150</sup> Now Saitô joins his parliamentary colleagues in criticising what he sees as overtly rigid application of the electoral law. "The law is now used to produce criminals rather than to defend people's freedoms",<sup>151</sup> he says.

The dominance of the military in government and further weakening of parliamentary control culminated in the introduction of the National Mobilisation Law in 1938. This allowed government, by the means of issuing an ordinance (*chokurei*), to control not only the production of weapons and ammunition, but also a wide range of civilian issues, including prices, exports, imports, and the right to private property, in order to "maximise national mobilisation of personal and material resources" during a war or an equivalent situation. For a country which had launched a full-fledged war against China several months earlier, such mobilisation was thought necessary. The bill was drafted by the Planning Agency, a newly created inter-ministerial bureau directly attached to the Cabinet now headed by Konoe Fumimaro.<sup>152</sup>

Saitô was angered by the attempt to bypass the constitution's fundamental mechanism for negotiation between collective goals and individual freedoms. Article 31 of the Constitution encapsulates such a fundamental balance, and for him, the law, if passed, would effectively alter the Constitution by rejecting the balance altogether.

Thus he launched a lengthy constitutional exposition during a parliamentary debate on the proposed law of 24 February 1938. Article 31 of the Constitution says that civil liberties guaranteed by the Constitution can be curtailed in the case of emergency by the means of imperial ordinances.<sup>153</sup> Yet this does not mean that civil liberties can always be restricted by an ordinance, according to Saitô. It merely means that in the case of a national emergency ordinances, instead of law (*hō*), can be used to curtail civil

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<sup>150</sup> The two main parties, Seiyūkai and Minseitō, jointly complained to the justice minister in a letter concerning the "unreasonably strict" control of elections in May 1936 (see, *ibid.*, pp. 214-5).

<sup>151</sup> TGS GS, vol. 66, p. 43.

<sup>152</sup> For the role of the Planning Agency and of the Showa Research Association, another advisory body to Konoe, in his national unity movement, see Itô Takashi, "Kyokoku Itchi Naikakuki no Seikai Saihensei Mondai" (part II), *Shakai Kagaku Kenkyū*, vol. 25, no. 4, 1974, pp. 59-147.

<sup>153</sup> Nakano Tomio says that Article 31 is peculiar to the Japanese Constitution. "Though the Prussian Constitution gave the king power to suspend the constitutional guarantees, the articles to be suspended were specified in the fundamental law. Under the Japanese Constitution the emperor is vested not only with the power to declare a state of siege, but also with the power to suspend any of the constitutional

liberties, whose restriction is only possible by law in a normal situation. Thus the article defines “a shared area of jurisdiction” by law and ordinance. The bill, however, is intended to eliminate law, thus Parliament’s intervention, from this shared jurisdiction. It demands that Parliament give “a blank letter delegating its legislative power” to government. Such a step is tantamount to suspending the Constitution. Saitô warns that the degree of discretion the bill accords to government will dissolve the whole constitutional framework. “The bill is intended to curtail civil liberties guaranteed by the Constitution which only law can restrict, at the government’s discretion and thus bypasses the relevant constitutional organs, Parliament and the Sûmitsuin.”<sup>154</sup>

Saitô also challenges the bill’s claims for efficiency. According to the government, “it is necessary to introduce a single law in order to mobilise the people when necessary, and total control of the populace and materials remains ineffective if government has to ask Parliament to enact a law each time it is necessary, thereby preventing the government from dealing with a national crisis”. But Saitô thinks that the total control envisaged by the bill is impossible. On the contrary the bill, if passed, will aggravate disunity in government, further obscuring the centre of power. According to Saitô, it will also require a number of new ordinances to actually carry out national mobilisation as stipulated by the bill. “This bill is without the benefits of a single law. It will create an uncontrollable and complex legal muddle.”<sup>155</sup>

Behind such criticisms are Saitô’s views of law and order, which are antagonistic to those of the hegemonic forces agitated and ready to act after the outbreak of the war, and which now include the military, bureaucrats, some politicians, and also certain sections of the public. Saitô is unfazed. He is more perturbed by the acceleration of such collective zeal which is self-propagating. “What is convenient for the government is not necessarily convenient for the people and the country as a whole.”<sup>156</sup>

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guarantees without the declaration of a state of siege” (Nakano, *The Ordinance Power of the Japanese Emperor*, p. 18).

<sup>154</sup> TGSGS, vol. 70, p. 347.

<sup>155</sup> *ibid.*, pp. 347-9.

<sup>156</sup> *ibid.*, p. 349.

Efficiency is a relative quality. If it is imposed on the people, it can become coercion. Saitô dissents unequivocally from the government's orthodoxies.

Furthermore "imposed" patriotism does not work. Law cannot nurture patriotism. Many people are already sacrificing their lives for their country, not because law has forced them to do so, but because they believe such a contribution is necessary for their country. It is a sign of bad government, if it has to use "law" to exploit such attachment. In a way that reveals the forces at work, Saitô's views were then described as "liberal" and "conservative", as opposed to the "progressive" and "modern" policies of Konoe.

Saitô made his speech at a time when constitutional debate had become all the more difficult after the Minobe Affair. He clearly avoids Minobe's name, and instead mentions the late Hozumi, the former's arch-rival, as a leading constitutional expert who was opposed to the delegation of legislative power, although he must have known that Hozumi's motive in doing so was to preserve the unity of imperial authority, not to defend the legislative power of Parliament.<sup>157</sup> Saitô's passing remark on Hozumi's theory is in line with the prevailing strategy of invoking imperial authority among the politicians who tried to defend Parliament against the encroachment of the military-bureaucratic government. Although one historian regards such logic as feeble—invoking imperial authority so as to defend parliamentary politics<sup>158</sup>—Saitô was motivated by his liberal vision of a nation in which people would conduct their affairs spontaneously. His opposition to any force that denies private property, which had previously targeted communists, is now focused on the governmental "reformers".<sup>159</sup>

The full delegation of legislative power to government that the National Mobilisation Law now secures signals a clear departure from the country's constitutional agreements. According to Nakano, writing in 1923, such delegation is necessary in any government because "the complexity and lack of uniformity and regularity among social phenomena render it impossible for the legislature to foresee all future contingencies",

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<sup>157</sup> For Hozumi's views on the delegation of legislative power, see Masuda, *Tennôsei to Kokka*, especially p. 35 and p. 135.

<sup>158</sup> Ikeda Jun, "Fuashizumuki no Kokka Kikô Saihen", *Nihonshi Kenkyû*, no. 288, August 1986, pp. 51-3.

<sup>159</sup> For Saitô's criticism of the "reformers", see his *Kakushinron oyobi Kakushin Undô o isamu* (Tokyo: Nihon Hyôronsha, 1934).

and also "... the lack of administrative and technical knowledge on the part of parliament, ... and the increase of governmental functions... make it more difficult for parliament to enact detailed and equitable laws".<sup>160</sup> However, such delegation cannot suspend legislative power, and also it must be justified by practical necessity. Therefore, "general, legislative delegation" is unconstitutional. "If a statute delegates a power to issue ordinances without designating a particular organ, that organ which generally has charge of the matters regulated by the statute is to be considered as the empowered authority. This construction has been followed by the [Japanese] government."<sup>161</sup> By 1938, what Nakano calls "general, legislative delegation" had become a reality. Saitô had long denounced the arbitrariness of power, as in the case of his criticisms of Prime Minister Tanaka Giichi's use of an emergency ordinance to revise the Peace Preservation Law in 1929. Yet with the introduction of the National Mobilisation Law, Saitô saw the demise of constitutionalism, as it terminated, at least legally, the contest between imperial ordinances (*chokurei*) and law (*hō*), which had sustained constitutional debate both inside and outside Parliament since the introduction of Parliament. By so doing, Saitô articulated the rise of a Japanese totalitarian system, as Fraenkel was to do for National-Socialist Germany.

In fact Saitô sees explicit similarities between the National Mobilisation Law and the Enabling Law that the Nazi party introduced in March 1933, shortly after Hitler was appointed Chancellor. "Since the Nazi government secured this law, it has enacted many laws at will. As a result, the German constitution has been effectively revised... In a similar fashion, [The National Mobilisation Law] will revise or suspend our constitution", says Saitô.

According to Fraenkel, who was forced to flee from Germany in 1940, the systematic growth of the National-Socialist dictatorship began with the Emergency Decree for the Defence against Communism of 28 February 1933, issued a day after the *Reichstag* fire, which the authorities used to persecute communists. In the following month, the Enabling Law was passed by an emasculated Parliament, giving National-

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<sup>160</sup> Nakano, *The Ordinance Power of the Japanese Emperor*, p. 121.

<sup>161</sup> *ibid.*, p. 129.



Socialism unlimited legislative power. "By the 'Enabling' Law Hitler became Germany's absolute ruler after he had previously (by the Decree of February 28, 1933) acquired the power of despot."<sup>162</sup>

This does not mean that Hitler actually had absolute power. Present-day historians agree that the government of Nazi Germany was "chaotic in structure". Hitler's power was limited by his own fear of losing his image and prestige. His decisions were often ignored or not properly implemented by his subordinates. His actions also had to accommodate factors outside his control, such as "the demands of the economy or fear of social unrest".<sup>163</sup>

However, such governmental disunity does not imply that Nazi Germany was not a dictatorial state. Thus Michael Burleigh says: "Democratic governments are riven with factional intrigues and personal rivalries; suffer duplication of functions; rely on outsiders to galvanise sluggish bureaucrats; and are constrained by innumerable external factors... what has been increasingly elevated into the explanatory master-key of Nazi rule, namely the mutually radicalising effects of competing agencies, may be both insufficient, and less remarkable, as an explanation for the single-mindedness with which the Nazis went about realising their ideological goals."<sup>164</sup> These "mutually radicalising effects of competing agencies"<sup>165</sup> do not explain either "a regime of rare destructiveness", or why a modern state with a republican constitution became dictatorial.

Hence if "incoherence" and "disunity" are symptoms of a modern state, democratic or non-democratic arbitrariness may be a sign of a dictatorial state operating within it. Thus, Fraenkel distinguishes the authority of medieval kings from that of Hitler. "The medieval king was considered to be absolute and practically irresponsible but his power was not an arbitrary one... There existed definite limitations for the will of

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<sup>162</sup> Fraenkel, *The Dual State*, p. 113.

<sup>163</sup> Ian Kershaw, *The Nazi Dictatorship*, second edition (London: Edward Arnold, 1989), pp. 70-81.

<sup>164</sup> Michael Burleigh, *The Third Reich, A New History* (London: Pan Books, 2000), p. 156.

<sup>165</sup> A similar view is expressed by Gordon Berger: "Japan's involvement in the China war ultimately exacerbated political conflict among the nation's elite groups rather than promoting the establishment of rigid totalitarian political controls" (Berger, "Politics and Mobilization in Japan, 1931-1945", in Peter Duus (ed.), *The Cambridge History of Japan*, vol. 6, p. 133).

the medieval prince which were usually expressed by the formula: 'The king is bound by the Law of God and the Law of Nature.'"<sup>166</sup> Fraenkel therefore identifies "arbitrariness" and "efficiency" as two major characteristics of the National-Socialist dictatorship. Following this line of thought, Burleigh insists on the need to examine "the supersession [sic] of the rule of law by arbitrary police terror" in order to explain why a modern state became dictatorial.<sup>167</sup>

Saitô's criticism records a similar process in Japan; how weak government with incoherent policy was able to steer the whole country into war. As with Nazi Germany, an all-consuming arbitrariness and a commitment to efficiency appear to be basic features of the regime.

Thus, according to Fraenkel, the "Prerogative State" is a "governmental system which exercises unlimited arbitrariness and violence unchecked by any legal guarantees".<sup>168</sup> Fraenkel observes the destruction of the rule of law in various court rulings after Hitler's National-Socialist Party took power. The persecution of dissenters is one such example. He quotes a National-Socialist theorist as saying: "it is necessary to provide a 'general clause' which will allow sufficient discretionary power to determine whether a breach of faith is treason."<sup>169</sup> Thus courts frequently gave maximum sentences for "the preparation of treasonable actions although the acts themselves involved no violence whatever".<sup>170</sup> A large amount of discretion for incrimination is one characteristic of pre-war Japanese law as we have already seen. However, the war-time system expanded such flexibility, and the 1941 Peace Preservation Law was the key act of legislation. Such use of law became possible with the assistance of an efficient bureaucracy.

In his study of Japan's pre-war "bureaucrat-intellectuals", Kenneth Pyle provides a mixed assessment of their roles in the country's modernisation. He finds that they were diverse in their political inclinations, and some were genuinely concerned with the well-

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<sup>166</sup> Fraenkel, *The Dual State*, p. 113.

<sup>167</sup> Burleigh, *The Third Reich*, p. 157.

<sup>168</sup> Fraenkel, *The Dual State*, p. v.

<sup>169</sup> *ibid.*, p. 49.

<sup>170</sup> *ibid.*, p. 50.

being of society in the face of unprecedented industrialisation and social change and believed in the need for strong governmental intervention. At the same time such attitudes were detrimental to the growth of civil society. "In Japan, too, propagation of the collective ethic, which was devised to ease the tensions in society, tended to weaken support for parliamentary politics and for open confrontation of competing interests."<sup>171</sup> In the 1930s, "revisionist" bureaucrats devised "a totalitarian solution to the social problem", thus tendering support for the country's war efforts, willingly or inadvertently. The National Mobilisation Law demonstrates this link between war and the bureaucracy very clearly.

At the same time the delay in implementing such a law, which came after a period of violence, may be explained by the relatively short history of the Japanese Parliament. Hitler became leader by securing a majority in Parliament, and the Enabling Law was a springboard for the Nazi government to build its power. In Japan's case, the role of non-elective bodies, particularly the military, was more prominent in the totalitarian process. This development may show that constitutional forms, such as Parliament, were still not fully established in Japan. At the same time, Parliament was not entirely powerless, and the military-bureaucrat government could not ignore it entirely. As for the populace, the government also felt it necessary to persuade them to co-operate with its war efforts. As well as massive governmental propaganda as seen in the publication of the *Kokutai no Hongi* of 1937, the National Mobilisation Law demonstrates such a need. Parliament, business, and a critical public, entailed "orderly" and "legal" mobilisation. To this extent Japan was then a modern state, in that no power would have been capable of mobilising it without "proper" procedure and justification. Saitô spoke on behalf of this modernity.

Yet Saitô also witnessed the transformation of the political system into the dictatorial. Earlier discretionary power had been essential for the new Meiji government and used amply as ordinances. The Meiji Constitution and the introduction of Parliament changed this situation. Imperial ordinances and legislative power now had to negotiate

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<sup>171</sup> Kenneth B. Pyle, "Advantages of Followership: German Economics and Japanese Bureaucrats, 1890-1925", *Journal of Japanese Studies*, vol. 1, no. 1, autumn 1974, p. 163.

with each other. When ordinances were again about to overtake the law, Saitô resisted and defended the constitutional evolution that the country had achieved so far.

Saitô understood that any power has to claim its legitimacy if it is to exert authority. This means that those who exercise power must be able to explain their conduct and policy and convince others to obey their orders. A political system requires that basic ground where this process of legitimisation takes place. Without such a structure, power, no matter how benevolent it may be, is illegitimate. As a member of the old guard of British-inspired party politics, Saitô adhered to this principle of constitutional agreements. The will of the people (*min'i*) is the corner-stone, both conceptual and practical, on which this structure must rely.

Saitô saw weakening government as a sign of a totalitarian structure and ideology, which prompted and was prompted by the decline of liberal thought, diminishing universalism, and the rise of nationalistic expansionism.

#### **4.5. Saitô and nationalism**

As we have seen, the core of Saitô's pragmatic social and political realism is his adherence to the liberty of the individual, and his awareness that the tension between authority and the individual is an essential aspect of a civil society. Such an individualistic and societal stance contrasts sharply with the totalitarian tendency of the 1930s. The differences become clear if we compare Saitô's liberalism with the concept of liberty prevalent among a number of Japanese "fascist" ideologues, which I will analyse based on Isaiah Berlin's two concepts of liberty. Because of his adherence to liberty, Saitô was capable of identifying the contradictions in the totalitarian logic of the "reformers". However, his "imperialist" position requires further examination, for in it we can find the possible limitations of his view.

Some historians have argued for Saitô's colonialist position. According to Itô Takashi, Saitô in his 1940 speech voiced a minority opinion in Parliament opposed to

the “reform” policy promoted under Konoe Fumimaro’s premiership. That policy consisted of support for Wang Ching-wei, who was fighting against Chiang Kai-shek, endorsement of a new Asian Order under Japan’s hegemony, and of the new national unity movement. Yet, in Itô’s view, the small number of parliamentarians who were opposed to the Konoe policy, including Saitô, were not necessarily anti-military and thus not against Japan’s war against China.<sup>172</sup>

Such a view is further elaborated by Arima Manabu. Based on criticisms, made at the time by “reformers,” Arima concludes that Saitô’s view is also colonialist. According to one such “reformist”, “the gist of the speech is that Japanese troops should be stationed in the occupied areas, intervene in Chinese sovereignty and preserve Japanese vested territorial rights... His opinion is no different from those promoting colonial war in the West”.<sup>173</sup> Saitô merely opposes “holy war” ideas only, and his view is that of an old-fashioned colonialist based on primitive Social Darwinism. Arima also finds that Saitô holds a nineteenth century elitist view of the masses. Here the masses need politicians to “guide” them. Thus Saitô’s political philosophy is backward, compared with those “reformers” who had begun to search for a more “democratic” form of government, different from Parliament, which in their view was ineffective in creating common opinion. However, the “reformers” had not yet found the logic to justify their hegemonic policy, and their insistence on holy war was a fig leaf to cover such conceptual deficiency. Saitô’s speech is significant in so far as it reveals this incompleteness in the “reform” policy, but no more.<sup>174</sup>

There is no denying that Saitô’s worldview is based on the nineteenth century utilitarian liberalism that also prompted the Western powers to engage in colonialist exploitation. Nevertheless, his adherence to the liberty of the individual, which led him to see the contradictions of Japan’s expansion policy, are part of a larger liberal creed, which began with the Meiji Enlightenment and sustained the Japanese political system

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<sup>172</sup> Itô Takashi, “Ugaki Kazushige no Gaikô Seisakuron”, *Shigaku Zasshi*, vol. 94, no. 1, 1985, pp. 140-1, 150.

<sup>173</sup> Kimura Takao, quoted by Arima Manabu, “Sensô no Paradaimu”, *Bulletin of the Graduate School of Social and Cultural Studies*, Kyushu University, vol. 1, 1995, p. 5.

<sup>174</sup> *ibid.*, pp. 1-9.



in its early years. Its demise in the 1930s is part of a process by which this creed was replaced by a more totalitarian ideology. By contrasting Saitô's liberalism with that of other representative figures, we will be able to shed further light on his colonial position, to evaluate it more fully.

Saitô lived in a period when ordinary Japanese began to demand that they too take part in government and the decision-making process, while their sense of national belonging was awakened by the country's involvement in wars, first with China, then with Russia. This simultaneous rise of civil society and of aggressive nationalism has already been pointed out by historians. Thus Matsuo Takayoshi asserts that the series of popular protests and democratic movements, which is often associated with the Taishô period (1912–26), began with the Hibiya Riots in 1905. According to Matsuo, demonstrators were protesting both against the government's concession to Russia when the two countries concluded the war and also against its oppressive policy.<sup>175</sup> Thus Matsuo characterises Taishô "democracy" as a period of domestic liberation and of rising Japanese nationalism.

The period seems to correspond to what Immanuel Wallerstein has called a time "after formal independence but before... national integration".<sup>176</sup> The Japanese were still searching for a common political community, and in such a process, civic demands and nationalistic sentiments appeared to be essential. Saitô's liberalism is a product of such a period. It could not escape from the nationalistic tendency of the time, and yet it maintained its defence of civil liberties. The tension between such collective identification and private needs, which is apparent in Saitô's liberalism during this period, is therefore a record of this process of national integration at the citizen's level.

Saitô was a strong nationalist from the very start. He joined the Kokumintô, which was formed in 1910 by members of Ôkuma Shigenobu's Kensei Hontô, who advocated a belligerent expansion policy. Thus in 1915 he says, "The main course of the [Japanese] Empire at the moment is not to maintain the status quo, but to advance... The

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<sup>175</sup> Matsuo Takayoshi, *Taishô Demokurashî*, pp. 7-39.

<sup>176</sup> Immanuel Wallerstein, *The Modern World-System*, vol. 1: *Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (New York: Academic Press, 1974), p. 6.

interests that the country has gained should not be entrusted to other countries. Doing so would destroy the fundamental national policy.”<sup>177</sup> A year earlier Japan had declared war against Germany based on the country’s alliance with Britain. In the same year Japan secured German possessions in the Shandong Peninsula and the Pacific Islands north of the equator. For Saitô, national expansion was the country’s right. He seems to belong to what Miyachi Masato calls the “nationalistic hawks” who became increasingly active in Japan after the Russian war.

According to Miyachi, these “hawks” include the “1868” generation who grew up while seeing Japan become a regional imperial power. They still adhered to the traditional expansion policy, which first surfaced in 1873 when some government leaders advocated attacking Korea. At the same time, they were eager to bring the people into the political process, and to combine constitutionalism and imperialism.<sup>178</sup>

Thus, while calling for popular politics, Saitô also supported Japan’s advance into Manchuria. In January 1915 the government of Ôkuma Shigenobu, who headed the Kenseikai, to which Saitô belonged, submitted the Twenty-one Demands to China. The party explained that the measure was intended to deal with the unstable situation in China after Japan’s war against Germany, to increase friendly ties between the two countries, and to maintain peace in the Far East.<sup>179</sup> However, the demands triggered strong anti-Japanese activity among the Chinese. Saitô had no doubts about Japan’s rights in South Manchuria, which the demands hoped to maintain. His laissez-faire views, and his adherence to social progress, prompted him to embrace ideas of national expansion and growth.

Such an attitude was long-lasting, and there is a nationalistic element in his anti-war campaign of the 1930s. Even in January 1937, Saitô supported Japan’s position in Manchuria.<sup>180</sup> At the same time he had begun to see flaws in the military policy. He was opposed to the plan to separate five more north-eastern provinces from China, and now

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<sup>177</sup> Saitô, *Kenpô oyobi Seijironshû*, pp. 139-40.

<sup>178</sup> Miyachi Masato, *Nichirosego Seijishi no Kenkyû* (Tokyo: Tokyo Daigaku Shuppankai, 1973), reprint 1982, pp. 248-51.

<sup>179</sup> *Rikken Minseitôshi*, vol. 1, p. 335.

<sup>180</sup> Saitô, “Kokumin wa Gikai o Kanshisubeshi”, *Kaizô*, January 1937, pp. 269-70.

had doubts about the aim of the war. If it was a war to maintain Japanese interests in Manchuria, it was a just war because Japan had legitimate rights there. However, if it went beyond that aim, then the war would become a war of aggression. Such logic would not have been acceptable for the Chinese, of course, because for them Manchuria was part of their integral territories. Nevertheless even if Saitô's position was still short of true conciliation, his ability to distinguish between "legitimate" and "illegitimate" demands allowed him to see aggression in Japan's overseas policy.

Similarly Saitô continued to uphold his survival of the fittest world view, but not for justifying Japan's aggression, but for criticising Konoe's new order doctrine. Thus, using survival of the fittest rhetoric, Saitô claims that the exercise of national sovereignty is subject to various limitations, one of which is respect for others' sovereignty. Konoe's new order doctrine ignores such limitations, and thus is both impractical and destructive. "It is unclear what the doctrine really means. The only comprehensible thing is that it advocates that the country should conquer weaker nations wherever possible and expand the country's territories and available resources."<sup>181</sup> Where Minobe had used the idea of power's limitations in order to assert a domestic legal state, Saitô uses it to restrain the country's external behaviour.

Maruyama Masao describes this loss of rational *raison d'être* as a primary cause of war.<sup>182</sup> But instead of attributing this process of accelerated irrationality to the pressure of the masses "duped" by government propaganda, Saitô points the finger at the military. Quoting an army intelligence report, Saitô concludes that the war started from misunderstanding of both Japan and China about each other. "Many Japanese assumed that China was what it used to be during the Sino-Japanese War, and failed to understand the China of today."<sup>183</sup> This failure of recognition cannot be attributed to the Japanese as a whole, but it is the sole fault of the military.<sup>184</sup> For him, political accountability is specific.

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<sup>181</sup> Saitô, "Kyôgi to Meishin no Sekai", *Saitô Takao Seijironshû*, p. 137.

<sup>182</sup> Maruyama Masao, "Kindai Nihon Shisôshi ni okeru Kokka Risei no Mondai", *Chûsei to Hangyaku*, pp. 228-9.

<sup>183</sup> Saitô, "Tenjô yori mitaru Sekai Sensô", p. 171.

<sup>184</sup> *ibid.*, p. 172.

Saitô then is a nationalist, but his world view is universal. In this sense, his position differs markedly from those supporting the rights of the nation (*kokken*), including Fukuzawa, and members of the younger generation who began to support Japan's Asian hegemony. Saitô's position will become clearer if we compare it with that of Fukuzawa and with that of two "ultra-nationalists", Kita Ikki and Nakano Seigo.

Fukuzawa's shift from the advocacy of liberty and pluralism to that of autocratic government and Japan's external expansion is often attributed to his changed view of the world order and his hierarchical assumptions of a division between "the civilised" and "the uncivilised".

Initially Fukuzawa was a strong believer in international and natural law. Thus he wrote in 1865: "A country which abides by reason cannot be assailed from without. If any other country should attack her without reason, another will always come to her aid... Thus if a country should start an irrational war, not only will she be defeated, but she will also incur the eternal contempt of the entire world. If she abides peacefully by reason, she need not fear the hostility even of great countries."<sup>185</sup>

Such a utopian view changed as his perception of the world order changed. Carmen Blacker finds that in 1876, he felt a universal moral principle "would not work in relations between nations, for the reason that it was impossible to get rid of the sentiment (*jôjitsu*) which bound groups of people together into clans or nations. It was ridiculous to think that this powerful and persistent feeling could be dispelled by simply invoking a 'universal moral principle' ".<sup>186</sup> The abandonment of universal principle is now replaced by more nationalistic attitudes, and in 1882 he writes: "The one object of my life is to extend Japan's national power. Compared with considerations of the country's strength, the matter of internal government and into whose hands it falls is of no importance at all. Even if the government be autocratic in name and form, I shall be satisfied with it if it is strong enough to strengthen the country."<sup>187</sup>

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<sup>185</sup> Quoted by Carmen Blacker, *The Japanese Enlightenment*, p. 123.

<sup>186</sup> *ibid.*, p. 128.

<sup>187</sup> *ibid.*, p. 134.

This new embrace of the nation is often attributed to his concerns with national unity and expansion resulting from such developments as the rise of the Jiyûminken Undô and the confrontation between Japan and China over Korea.<sup>188</sup>

For many intellectuals, including Fukuzawa, the issue of national progress became paramount, at a time when the nation became a concrete political entity through the debate about treaty revision and also regional hegemony. Around this time, the nation became the ultimate authority for such intellectuals as Fukuzawa. Saitô on the other hand adhered to the idea of social progress, but remained strongly individualistic. Although his language in some of his speeches sounds nationalistic, calling for the emperor's supreme authority, he is much less ideological than Fukuzawa. Such psychological distancing from the centres of power observable in Saitô may be explained by his social position, as well as by his individualistic outlook. Lawyers were also the main promoters of the Taishô democratic movement, according to Matsuo Takayoshi. Along with their professional training, their "outsider" status may have encouraged them to support reform, as they were supposed to confront judges who were "representatives of the emperor".<sup>189</sup> Since he too was outside this state structure, Saitô may have been able to develop a less particularistic concept of the state.

Similar discriminations are also necessary in a comparison with the thought of Kita Ikki (1883-1937). Kita was "the most important spokesman" for those in post-Restoration Japan who began to call for radical change in Japanese society and institutions and Japanese hegemony in "a unity of resurgent Asiatic peoples".<sup>190</sup> Kita advocated the organ theory and social revolution as Saitô and Minobe did. But his views were far from liberal. "For Kita, the state struggle was justified because it contributed to the process of social evolution", according to George M. Wilson.<sup>191</sup> "Based on an optimistic appraisal of the prospects for 'social evolution', he predicts the ultimate

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<sup>188</sup> Blacker analyses Fukuzawa's change of heart, saying "Influenced, probably, by the current high feeling on the question of treaty revision, he ceased to stress people's rights, either as the necessary condition or as the ultimate object of national power..." (*ibid.*, p. 133).

<sup>189</sup> Matsuo Takayoshi, *Taishô Demokurashî*, p. 26.

<sup>190</sup> Ryusaku Tsunoda, Wm. Theodore de Bary and Donald Keene (eds.), *Sources of Japanese Tradition*, vol. 2 (New York: Columbia University Press, 1958), p. 266.

<sup>191</sup> George M. Wilson, *Radical Nationalist in Japan: Kita Ikki 1883-1937*, (Cambridge, Mass.: Harvard University Press, 1969), p. 34.



advent of a utopian society made up of all mankind.”<sup>192</sup> However, if one distinguishes between “the civilised” and “the uncivilised”, it becomes easy to accept justifications for imperialism or colonialism. Thus “Imperialism was a step on the ladder of social evolution that led eventually to the goal of world federation. Imperialism... is the precondition of internationalism (*sekaishugi*).”<sup>193</sup> In Kita a millennial vision is combined with a vision of Japanese hegemony.

“Clearly Kita was a stepchild of nineteenth-century Europe”, says Wilson. “Immersed but recently into the maelstrom of modern Western thought, young Japanese intellectuals grasped at Darwinism with all the fervor of their Western counterparts. Kita’s reliance on the evolutionary model, as well as his tendency to think of the state in organic terms, reveals the enormous influence positivism exerted on Meiji thought. He shared with Comte, Spencer, and many of his own countrymen the impulse to create a comprehensive system of knowledge based on supposedly universal laws. He glimpsed the mirage of ultimate perfection in modern science and tried to apply its fruits to man in society. In his own estimation, he had made a ‘daring attempt to... establish social democracy on the basis of a unified knowledge of all the social sciences... as well as biology and philosophy’.”<sup>194</sup>

Like Mill, Saitô would object to such mysticism, and the contrast between Saitô and Kita is stark. Saitô is a gradualist as well as a rational materialist, and for him the idea of “ultimate perfection” is remote.

For the reformers, as well as for radicals such as Kita, the tension between authority and the individual is a problem to be eliminated. For Saitô, it is a condition that people need to live with. In this context Saitô understands the role of Parliament and other constitutional institutions as mechanisms for settling that tension. In 1934, when he saw the rise of the military-bureaucratic government, Saitô said: “Show me if there is an institution that can represent the people which is not Parliament? How can ordinary people trust in a bureaucratic and militaristic clique which has nothing to do with them

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<sup>192</sup> *ibid.*, p. 23.

<sup>193</sup> *ibid.*, p. 35.

<sup>194</sup> *ibid.*, p. 37.

but has begun to say that it represents the people?”<sup>195</sup> Saitô knew that popular will was a fiction, but an indispensable concept for the working of any constitutional system.

Accordingly Saitô's concept of liberty rejects totalitarian attitudes, while the “1905” generation had begun to use the idea of liberty to support Japan's colonial expansion. Nakano Seigo (1886–1943) is one such example. Nakano is considered as one of a very few Japanese who formulated fascist ideals akin to those of Europe, without referring to the divinity of the emperor.<sup>196</sup>

Originally a journalist, Nakano won a seat in the House of Representatives in 1920 as an independent. In 1924, he joined Saitô's Kenseitô (later Minseitô) and worked towards the introduction of universal male suffrage. But after the outbreak of the Manchurian Incident in 1931, his policy became more radical. In 1931, Nakano and one of Minseitô's senior leaders Adachi Kenzô, who was close to Saitô, left the party seeking a pro-military national unity government. The event led to the collapse of the government of Minseitô leader Wakatsuki Reijirô, as Adachi was a state minister. Nakano's stance became more radical as Japan's war against China continued. He organised his own group Tôhokai in 1936 based on Nazi and Italian Fascist models. He was on the planning committee of Konoe's Imperial Rule Assistance Association, when it was launched in 1940. But in less than a year, Nakano resigned from the association, criticising its bureaucratic control. He committed suicide in 1943 after he had been investigated by police for his criticisms of the Tôjô government.

Tetsuo Najita highlights Nakano in his study of the development of extreme Japanese nationalist thought in the early twentieth century. For him Nakano provides “a meaningful thread” of continuity with the “spirit” of the Meiji Restoration. Najita finds Nakano's concept of “spiritual autonomy”, which is derived from his attachment to the intuitionism of Neo-Confucianism, to be a catalyst for fascist thought.

For Najita, Nakano's career constitutes “a reaffirmation of liberal individualism...in fact, a reaffirmation of the rebellious moral individualism of the

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<sup>195</sup> Saitô, *Kakushinron oyobi Kakushin Undô o isamu*, p. 15.

<sup>196</sup> Roger Griffin (ed.), *Fascism* (Oxford: Oxford University Press, 1995), p. 239.

Ôyomei [Wang Yang-ming] tradition”.<sup>197</sup> It testifies to the fact that Japanese individualism “in its uncompromising and extreme form could not be intrinsically related to the modern political framework within which movements were to be launched and sustained. Nakano’s propensity for thinking in the mode of radical spiritual autonomy made it virtually impossible for him to relate this autonomy with legal and organizational concepts, such as definitions of property or concrete mechanisms of parliamentary politics.”<sup>198</sup>

In our time, in his highly relevant 1969 essay entitled “Two Concepts of Liberty”, Isaiah Berlin examines the nature of the concept of liberty that may lead to totalitarianism. The aim of the essay is to demonstrate that the pursuit of a single value, which is liberty in this case, may lead to the denial of other ultimate values, such as equality, justice, and happiness, and thus may be used to justify the oppression of others. The essay defends pluralism for maintaining a free society.

To reveal the potentially destructive power of the concept of liberty, Berlin distinguishes between “positive” and “negative” concepts of it. In the negative sense, liberty means liberty to protect one’s private space. In the positive sense, liberty means liberty to demand one’s rights. Liberty in the positive sense often leads to a revolution, such as the French Revolution.

Berlin is concerned with our immediate history of violence, both metaphorical and real, carried out in the name of liberty, and questions what are the safeguards essential to the creation and preservation of a free society. For this purpose, Berlin resorts to the nineteenth century liberals, such as Mill, de Tocqueville, and Constant, who felt that their “negative” rights were threatened by “positive” liberties as the result of the emergence of “a democratic Majority”. For them, “Democracy may disarm a given oligarchy, a given privileged individual or set of individuals, but it can still crush individuals as mercilessly as any previous ruler.”<sup>199</sup>

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<sup>197</sup> Tetsuo Najita, “Nakano Seigo and the Spirit of the Meiji Restoration in Twentieth-Century Japan”, in James William Morley (ed.), *Dilemmas of Growth in Prewar Japan* (Princeton, N.J.: Princeton University Press, 1971), p. 413.

<sup>198</sup> *ibid.*, pp. 417-8.

<sup>199</sup> Isaiah Berlin, “Two Concepts of Liberty”, in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), pp. 163-4.

However, even the negative sense of liberty may lead to radicalism, to denial of others' freedom and even to colonialism. This is because the idea of liberty becomes detached from the idea of a common community. This detachment can be as dangerous as the positive concept of liberty. According to Berlin, the negative concept of liberalism may lead to self-abnegation, "the very antithesis of political freedom". But Berlin also says: "Those who are wedded to the 'negative' concept of freedom may perhaps be forgiven if they think self-abnegation is not the only method of overcoming obstacles; that it is also possible to do so by removing them: in the case of non-human objects, by physical action; in the case of human resistance, by force or persuasion, as when I induce somebody to make room for me in his carriage, or conquer a country which threatens the interests of my own."<sup>200</sup>

One possible outcome of such self-preserving opinion is the failure to recognise others as one's equals, be it a person, a class of people, or a nation. In this sense Nakano's radical "spiritual autonomy" is relevant to both Japan's domestic system and to its colonial policy in the 1930s. Hence Mark R. Peattie describes Japanese colonialism in the 1930s as "as much a state of mind—a constellation of attitudes and assumptions—as it was a system of bureaucratic mechanisms, legal institutions, and economic enterprises".<sup>201</sup> An idea of liberty that can sponsor self-preservation is one strand of Japan's expansionist ideology, since it entails a policy of removal and absorption, either of domestic opposition or neighbouring countries. Such logic is recognisable in Nakano's thought, and Saitô repudiates it as detached from reality.

Thus Berlin's answer to preserving a free society is a practical compromise. "Positive" liberty is meaningful as long as "negative" liberty is protected. Yet "negative" liberty cannot be pursued on its own, because that would destroy the liberty of others.

Following the nineteenth century liberal tradition, Berlin asserts that such a compromise must consist of the general recognition of basic rights and common rules. He says: "... no society is free unless it is governed by at any rate two interrelated

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<sup>200</sup> *ibid.*, p. 140.

<sup>201</sup> Mark R. Peattie, "Introduction", in Ramon H. Myers and Mark R. Peattie (eds.), *The Japanese Colonial Empire 1895-1945* (Princeton, N. J.: Princeton University Press, 1984), p. 5.

principles: first, that no power, but only rights, can be regarded as absolute, so that all men, whatever power governs them, have an absolute right to refuse to behave inhumanly; and, second, that there are frontiers, not artificially drawn, within which men should be inviolable, these frontiers being defined in terms of rules so long and widely accepted that their observance has entered into the very conception of what it is to be a normal human being... When I speak of a man as being normal, a part of what I mean is that he could not break these rules easily, without a qualm of revulsion... The freedom of a society, or a class or a group, in this sense of freedom, is measured by the strength of these barriers, and the number and importance of the paths which they keep open for their members—if not for all, for at any rate a great number of them.”<sup>202</sup>

Thus Berlin provides two types of safeguard, institutional and ideological: the rule of law and the general recognition of basic rights. He believes that they constitute a self-defining mechanism of society, and society’s ability to permit diverse opinion is essential to the working of this mechanism.

Such endorsement of pluralism stems from Berlin’s liberalism, from attitudes towards social change shared by nineteenth century liberals such as Mill. They believe in people’s spontaneous ability to organise their common life. They defy “imposed” change but believe in protracted, perpetual change initiated and carried out by members of society themselves. Thus Berlin explains his vision of free society and his understanding of liberty: “This is almost at the opposite pole from the purposes of those who believe in liberty in the ‘positive’—self-directive—sense. The former [the school of Mill] want to curb authority as such. The latter [advocates of positive liberty] want it placed in their own hands... These are not two different interpretations of a single concept, but two profoundly divergent and irreconcilable situations to the ends of life.”<sup>203</sup>

Such a comparison is applicable to Saitô and Nakano. Loyal to nineteenth century liberalism, Saitô remained wary of positive liberty. Positive liberty, the right to participate in public decisions, had driven him to seek a political career. However for

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<sup>202</sup> Berlin, *op. cit.*, pp. 165-6.

<sup>203</sup> *ibid.*, p. 166.



him, liberty was negative, and it constituted an inviolable area of private life, the attitude shared by his two contemporaries in this study, Minobe and Sakai. This attitude grew as he got older, and he felt compelled to confront government when it increasingly overrode negative liberty. Such an attitude sometimes earned him the reputation of being indifferent to social rights. But he was even more hostile to the radical right, and jingoistic nationalism, precisely because he did not believe in the positive concept of liberty on its own. Thus for him parliamentary politics was a practical compromise essential to a free society, because the very concept of popular will is supposed to check the imposition of authority. For Nakano, such a compromise is corruption, and he seeks a more “effective” and “efficient” way of conducting social and political change.

Such observations lead us to a larger assessment of Japan’s totalitarian system in the 1930s, and of Japan’s modernisation and nation-making in general. For the elite who lived through pre-war Japan, combining negative liberty and social engagement was a demanding task. The difficulty derives from the constant interference in one’s life of the state, the speed of social regimentation, and the way in which modern Japanese national identity was formed. The challenge would have been harder for the younger generation, as the institutional grip on people’s lives was firmer among this generation, as Ishikawa Takuboku observed in his 1910 essay.

The autonomy of society, which Fukuzawa took for granted, had by then become increasingly an alien concept. Japan’s modernisation did not allow the growth of common, universal values essential to “the ends of life”. Aims became temporal and immediate. Japanese society was deprived of the invisible “barriers” whose strength is a measure of free society. Japan’s colonial expansion is also a symptom of Japan’s modernisation, its emphasis on specific interests and failure to find universal common values, as well as a conscientiously formulated policy for dealing with the world.

In Japan’s modernisation process, the erection of such “barriers” was not only discouraged, but also constantly undermined by the arbitrariness of power. This fragility of the political system became all the more serious when the uncertainty and insecurity created after World War I further exposed the shallowness of the political and social foundation of free society. In the following passage Saitô observes the post-war world as

well as his country: "The abolition of the monarchy [in many European countries after World War I] has caused the loss of central state power, resulting in power battles, such as are seen in new presidential elections. The political system is constantly in disarray. If such a condition is unfixed and left to natural development, nations will fall into further confusion, and eventually collapse." He anticipates dictatorship, with Russia and Germany as the two most likely examples. Nevertheless, people should not follow dictatorial government, because they forsake their own freedom. "The freedom of a people will be lost, and original ideals of the revolution will disappear amid personal ambition. It will be too late for the people to regret their previous support [for such dictatorial power]."<sup>204</sup> What Saitô warns against here is the rise of radical thought, of both right and left, in Japan itself.

According to Juan Linz, fascism is a common phenomenon in post-war Europe, in response to a "sequence of development crises" and also popular demands for democracy, which raised such issues as "state-building legitimation, participation, incorporation of new social forces, representation in legislative organs, and ultimately share in the executive power".<sup>205</sup> Also, some "late-comers" such as Italy and Germany experienced "a heightened need for a sense of national cohesion" in the face of the success of Britain, France and others in their colonial expansion. In those countries, "the consciousness of the proletarian nation" became paramount.

Japan's colonial expansion must be understood in this context. The idea of national unity was threatened by the disappearance of other monarchies, and by the rise of nationalism in Japan's colonies and in China. Such developments shook the "new" country, which was without a solid political system or public consensus about political values. Japan too was without the defences against fascism that existed in other countries. According to Linz, these included "the organizational penetration of the socialist, communist, and anarcho-syndicalist labor movements", the strength of "the social doctrine of the Church", and the presence of "old parties".<sup>206</sup> Faced with its own

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<sup>204</sup> Saitô, *Kakushinron oyobi Kakushin Undô o isamu*, pp. 103-4.

<sup>205</sup> Juan Linz, "The crisis of democracy after the First World War", in Roger Griffin (ed.), *International Fascism* (London: Arnold, 1998), p. 175.

<sup>206</sup> *ibid.*, p. 182.

“development crises”, Japan resorted to a variant of what Hannah Arendt has called “tribal nationalism”, which began to be intertwined with the course of government.

Saitô viewed this process as the gradual erosion of substantial rationality from government policy. Such a stance is due to his universalist vision, his adherence to the liberty of the individual, and to the constitutional framework. Despite being an advocate of social progress, his values are therefore antithetical to many of the principles that supported Japan’s modernisation, and which then nurtured fascist thought.

## Conclusion: Dissent and its Uses

Perry Anderson describes the transition from feudalism to capitalism in Western Europe not as “an organic internal succession” from a lower to a higher mode of production, but as a “concatenation of ancient and feudal modes”. Thus while “the weakening of the mediaeval conceptions of vassalage...conferred new and extraordinary powers on the monarchy, it at the same time emancipated from traditional restraints the estates of the nobility”.<sup>1</sup>

Even though Japan was without that “rebirth of antiquity” that Anderson finds so important in the development of the West, it too experienced its own “mesh” of social formations that brought together old and new. Hence in the post-Restoration period extensive changes, generally government-led, were “imposed” on the people in the name of modernisation. Nevertheless, these changes also involved the removal of traditional barriers to free association among the population. Authority and the people simultaneously entered the “public” sphere, in ways that were unprecedented.

How, then, could the individual attempt to influence the general course of society when such changes were taking place so fast and forcefully? Such a question, of course, may seem to exaggerate the role of the individual at a time of drastic social, political and economic change. State authority had now come into people’s lives as overwhelming social and economic force, with the people given an apparently subordinate role.

Yet the same question may also shift our attention away from modernisation as “social engineering” to modernisation as the spontaneous formation of the common life in response to, and as the result of, what can be described (following Anderson) as “a vortex of heterogeneous movements”.

Maruyama Masao is one of the most articulate social commentators to have dealt with this question, in his study of *shutaisei* (subjectivity). This enquiry has shared Maruyama’s concern with the role of the individual in political

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<sup>1</sup> Perry Anderson, *Lineages of the Absolutist State*, p. 20

modernisation, and it therefore seems appropriate to conclude by returning to a question that Maruyama has addressed so steadfastly.

Rikki Kersten defines a key emphasis of Maruyama's work as follows: "Maruyama's analysis of Japan's history assumed that human agency had been supplanted by a structure of change which precluded a sense that human history was in human hands. This was surely the basis of Maruyama's pleas for social autonomy in Japan's political culture."<sup>2</sup>

Maruyama is therefore counted as one of the "modernists",<sup>3</sup> who believed that true modernisation could not occur until the people themselves became free and active agents in a political community. For him, social autonomy implies an autonomous self awakened by the tension between the "private" and "public" spheres of life. Yet in a country where the conflation between value and reality prompts a traditional mode of thought,<sup>4</sup> there is little room left for the individual to develop a sense of social autonomy. Maruyama thinks that the problem is epistemological. Thus, as Fukuzawa did before him, Maruyama engaged in severe criticism of prevailing patterns of Japanese thought and behaviour. Active especially in the years immediately after the end of World War II, he made serious attempts to link what he called the "pathological" aspects of Japanese society to the Japanese fascism he had just witnessed.

Maruyama attributes the dwarfing of social autonomy to the weak traditions of individuality and the "traditional" emphasis on obligation. In 1961 he wrote that despite the country's dynamic industrial advances, the people still adhered to a status-based hierarchical order, and had not fully grasped the concept of the contributing individual who actively participates in the running of society.<sup>5</sup> The pattern of behaviour that focused on personal loyalty was still omnipresent, and had been chiefly responsible for the consolidation of the emperor system before and during the war.<sup>6</sup>

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<sup>2</sup> Rikki Kersten, *Democracy in Postwar Japan: Maruyama Masao and the Search for Autonomy* (London: Routledge, 1996), p. 74.

<sup>3</sup> Andrew E. Barshay, "Imagining Democracy in Postwar Japan: Reflections on Maruyama Masao and Modernism", *Journal of Japanese Studies*, vol. 18, no. 2, summer 1992, p. 366.

<sup>4</sup> *ibid.*, p. 374.

<sup>5</sup> Maruyama, *Nihon no Shisô*, pp. 174-5.

<sup>6</sup> Maruyama, "Chûsei to Hangyaku", *Chûseito to Hangyaku*, p. 79. The article originally appeared in *Kindai Nihon Shisôshi Kôza*, vol. 6, 1960.



Central to Maruyama's thought is an idea of progress which blends respect for European modernity and *a priori* morality. For "Unless you commit yourself to values which surpass present reality and which cannot be seen, you will be dragged along by the reality you can see and your way of thinking will be changed. In the end you will become an appendage of circumstance."<sup>7</sup>

Such a Kantian and historicist approach is now subject to criticism. Maruyama's analysis is criticised for its "alienation from, even 'antipathy toward' the masses".<sup>8</sup> Seeming to rely on excessive reification of such categories as feudalism, capitalism and modernity, his analysis of Japanese fascism is found not to incorporate aspects of the inner dynamic of society, such as "the role of technocrats and of the 'intelligentsia' ".<sup>9</sup>

Furthermore (in my view) a major limitation of Maruyama's work involves an insufficient grasp of value creation. Questions about institutional procedures, including the role of public debate, escaped his analysis. But by omitting politics from his inquiry, Maruyama failed to deal with the role of the individual in the formation of the common life, which is central to social autonomy even in his own definition.<sup>10</sup>

Obviously there remains much of value in his thought (and I will defend his position shortly), but this neglect of politics, of what Barshay calls "the peripheries",<sup>11</sup> is a major weakness of his analysis, because it can neither deal with the relativism of social values, nor cope with the rational scepticism expressed by those who choose to dissent.

My own position is that Japanese social modernisation intensified the tension between authority and the individual. Hence "the fatal conflation of value and reality" is both an outcome of tradition and a reflection of the conditions imposed by an organic system. Thus without recognising the "peripheries" and the *active*

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<sup>7</sup> Quoted by Kersten, *op. cit.*, pp. 98-9.

<sup>8</sup> Barshay, *op. cit.*, p. 388.

<sup>9</sup> *ibid.*, p. 389.

<sup>10</sup> Thus, expressing her frustration with Maruyama's incomplete inquiry into social autonomy, Kersten says: "But... was there legitimate room for the creative subject in the law of historical materialism?... was it possible to regard subjectivity (*shutaisei*) as a scientific entity, or one which could be treated in a scientific way?" (Kersten, *op. cit.*, pp. 98-9).

<sup>11</sup> Barshay notes that: "His [Maruyama's] concern remained less with social solidarity at the peripheries than with personal subjectivity and political integration at the national level....

interaction between society and the individual, it would be difficult to imagine any form of debate about democracy and political modernisation.

In this sense, I am reluctant to follow the definitive demarcation between state and people, to which Maruyama himself adhered. For it ignores the familiar difficulties of negotiating one's public and private life, and eliminates value creation from debate about the nature of civil society. Thus the three subjects of this study were all *social* beings, and consciously so. For them, society was inseparable from what they were. They all took the public sphere seriously, and for them it was not necessarily equivalent to the state.

I would also venture to claim that a totalitarian state emerged in Japan, not primarily because a still feudal people blindly followed their leaders, but because they aspired to be members of a new political community. This does not mean that they were willing participants of a totalitarian movement. But the concept of the state epitomised by the emperor in person appears to have gained strength because they recognised themselves as active and equal members of a community. Otherwise it is difficult to explain the long history of social protest that characterises pre-war Japanese society, and also the significant successes of the bureaucracy in social mobilisation.

De Tocqueville in this regard warned that dictatorship may occur in "democratic" nations, unless restrictive forms and private rights are respected. De Tocqueville was witnessing a transition from feudalistic arrangements to "democratic" states in the early nineteenth century. But a period of transition conceives of both promise and danger. Like many of his liberal contemporaries, de Tocqueville was concerned with what appeared to be the increasingly narrow domain of personal freedom in the face of the growing role of the state and of social regimentation.

The Meiji Restoration also marked such a transition. It created a "democratic" state, while containing forms were still fragile. As for the protection of private rights, it would take some time for a majority of the population to share an integrating creed. The great promise of the Restoration was therefore accompanied by the instability inherent in a newly democratised nation.

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Maruyama's image of the 'periphery' was one of traditionalism and irrational attachment" (Barshay,

Hence the pre-war period is one of great fragility. Not only did the abundant use of discretionary power constantly undermine the available democratic forms, but repeatedly moves to promote so-called “progress” were grounded not on shared values or social consensus but on political expediency. Given the fragility of both forms and consensus, it becomes easier to understand how the original “prerogative” state evolved into the totalitarian system of the late 1930s. Minobe, Sakai, and Saitô all strove to strengthen the available forms and to promote their acceptance. Each in their different ways worked to define and preserve rational authority within a common framework. Yet the fact that they rarely had to change their political opinions in any fundamental way, and that what made them “heretical” was a change of social mood and political climate, points to the lasting weakness of the new forms of state and to their failure to win general acceptance.

Thus what failed to survive in the course of Japan’s modernisation was a pluralism upheld by the tension between collective goals and the liberty of the individual. The careers of the three subjects of this study all record this process of vanishing pluralism.

The values that supported Meiji reforms involved a belief in social progress, equality, and the liberty of the individual. How then did these values, a great engine of political modernisation in the country, come to support the totalitarian system? In her study of totalitarianism, Hannah Arendt attributes the rise of totalitarianism in Europe shortly after World War I precisely to the superimposition of “state” value on “reality”. Hence post-war Europe saw the dissolution of traditional national boundaries and the emergence of new nation-states, with unity justified ideologically rather than founded on genuine communal feeling. Communal disintegration, social atomisation, and imperialist desires all contributed to the rise of “tribal nationalism”. A major victim was pluralism and tolerance based on authentic experience.<sup>12</sup>

Even the idea of equality can lead to totalitarianism, if it is detached from a belief in common humanity, according to Arendt. For those who assumed that people were equal by nature, the prevailing inequality was due to history and circumstance. Thus, for them the main aim of social reform became education and assimilation, and

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*op. cit.*, p. 394)

<sup>12</sup> Hannah Arendt, *The Origins of Totalitarianism*, third edition (London: George Allen & Unwin, 1967), p.232.

coercion could be justified. Human diversity and cultural differences were no longer values in themselves. They became something rectifiable so as to ensure a higher value, equality. Thus Arendt gives her warning:

Nineteenth-century positivism and progressivism perverted this purpose of human equality when they set out to demonstrate what cannot be demonstrated, namely, that men are equal by nature and different only by history and circumstances, so that they can be equalized not by rights, but by circumstances and education. Nationalism and its concept of a 'national mission' perverted the national concept of mankind as a family of nations into a hierarchical structure where differences of history and organization were misinterpreted as differences between men, residing in natural origin. Racism, which denied the common origin of man and repudiated the common purpose of establishing humanity, introduced the concept of the divine origin of one people as contrasted with all others, thereby covering the temporary and changeable product of human endeavor with a pseudomystical cloud of divine eternity and finality.<sup>13</sup>

Thus if a viable politics assumes a state of perpetual suspension between political, economic and social imperatives and value judgements, it yields to totalitarianism when this crucial distinction begins to break down.

Minobe, Sakai, and Saitô on the other hand did not seek to place political values at the service of a compensatory national vision but always attended to genuine social need. They adhered to values such as the liberty of the individual, yet remained highly sensitive to the "weight" of reality. The emergence of the totalitarian system in Japan in the 1930s, signalled by their demise, reflects the loss of their ability to bring values and reality into sceptical relation.

This argument brings us back to Maruyama. Maruyama may have been deficient in not enquiring into the formation of values, but in his approach, subjectivity is always the product of the tension between self and the outer world. Kersten notes that for him "great danger lurked in historical materialism's claim to objectivity. In this view objectivity meant that 'responsibility for one's actions is shut out, as though history was screened off from you, working all on its own'."<sup>14</sup> For Maruyama, the subjective was part of one's ability to take responsibility for one's actions based on a clearly felt tension between value and reality.

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<sup>13</sup> *ibid.* p. 234.

<sup>14</sup> Kersten, *op. cit.*, p. 101.

Also, although Maruyama's intellectual background (German metaphysical thought, Hegel) is not apparently compatible with the idea of the formation of organising principles, his insistence on the private sphere and on individual values are part of the fundamental tenets of liberalism. Thus, through his value-centred deductive analysis, Maruyama made a powerful exposure of the problems of the Japanese state and society. My own study, inductive rather than deductive, is meant to fill a gap in his work, as well as to enquire into the democratic traditions of the country.

Maruyama then, by default, can serve to remind us of the role of dissent in the formation of the common life. And here once more Mill seems relevant: "But on every subject on which difference of opinion is possible", he says, "the truth depends on a balance to be struck between the two sets of conflicting reasons... it has to be shown why that other theory cannot be the true one: and until this is shown, and until we know how it is shown, we do not understand the grounds of our opinion."<sup>15</sup> Mill's position thus differs fundamentally from Hegelian dialectic which assumes that higher truth is to be found through metaphysical exercise. For Mill, the opinions of "others" are essential to comprehend his own. He assumes a common "domain" of knowledge, and in this domain contrary opinions are vital.

Such a common domain of knowledge is also essential for the creation of liberating forms and consensus in a political system. But to what extent could Japan create such bases for common governance in its modernisation process? As Habermas points out, such developments require freedom of speech and association. However, we know that Japan's modernisation did not ensure such conditions.

Firstly, government harassment, deliberate attempts to eliminate opposition, and the use of discretionary power all constantly threatened the consolidation of still fragile institutional forms in the political system. These measures were justified as politically necessary in order to pursue national goals and social cohesion. In the short run, such measures may have been justified. In the long run, however, strong emphasis on collective well-being at the expense of the liberty of the individual was damaging. It not only discouraged the people's desire to help consolidate the existing structures but also eroded their trust in the embryonic forms as a whole.

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<sup>15</sup> Mill, *On Liberty*, pp. 41-2.



Secondly, when “national” policies were pursued with great strength, it was difficult for spontaneous organisations to grow. In this sense, the speed of change, prompted by the collective insistence on social progress, seriously affected political participation.

Thirdly, the Japanese “world view” was linked to the “world system” of capitalism, and while they were aware of their country’s need to accommodate that system, a sense of being marginal was strong among the elite. To proclaim a belief in “common humanity” was quickly to invite suspicion, particularly among those who were brought up believing that their country was now an imperial power. To assert values as universal ones while deeply aware of “unfair” international arrangements was a highly ambivalent task for intellectuals. For them, distinguishing between reality and value became a source of frustration rather than a crucial starting point for the creation of organising principles.

Given these conditions (and from our perspective) traditions of plurality and tolerance still seem the only reliable mechanisms to ensure free government and thus achieve political modernisation in the long run. Continuous governmental attempts to silence opposition and the increasing regimentation of social life may have contributed to swift “modernisation”, but they also created serious problems of common governance. For such measures not only prevented the development of a self-regulating mechanism of government but also eliminated the self-protecting functions which must be inherent in society in order to check its collective action. And it is important that opposition becomes a part of the system. For instance, although Saito was a capable critic of the system while he was in opposition, he very often acquiesced in it when he was in government. This aspect of his career reveals the limitations of merely “private” dissent. For the role of opposition must be institutionalised so as to become an integral part of governance.

To incorporate opposition into the normal political system may appear enormously difficult. However, modernisation under autocracy has serious risks. Thus even in a developing country with an acute sense of vulnerability to “the world system”, tolerance of dissent seems the only effective means to ensure true autonomy. Politically this means debate, value creation, and the scrutiny of power. Minobe, Sakai, and Saitô all show that such individual intervention is essential in this

process. Their careers show that when both government and society begin to eliminate dissent, it may signal the loss of those self-scrutinising mechanisms so essential for their long-term survival.

Hence the importance of personal intervention in social change. The three men were all strongly individualistic. They possessed the intellectual ability to assess the outer world and to formulate their position based on it. They affirmed their own freedom, and they found compromise repugnant, because they took personal freedom for granted. They participated, crucially, in the evolution of the political community as critics and commentators, and without the intervention of people like them, Japanese society would have had even less chance of achieving modernisation even in the narrow political sense.

Each of the three has his own particular debts: Anglo-American legal thought via Jellinek for Minobe, humanistic Marxism for Sakai, and nineteenth century British liberalism for Saito. And yet they were fiercely independent, adapting and reinterpreting their reading so as to attend to immediate circumstances. What sustained them was a belief that their arguments would connect with the “wider community”, including future generations. And such a belief was inseparable from their long-term vision for social progress. Economic and technological advances surely change the way we live, and yet fundamental questions will stay with us. They felt they were tackling questions essential to our way of living.

E. H. Norman, more than a half century ago, spoke of “the complexity of modern Japanese society; a society of which it is easier to describe some characteristic feature than it is to explain its significance to the whole”. For “it is not so difficult to present a brief account, for example of the bureaucracy, of the financial houses, of the armed forces, or of the political parties, but to ascribe to each group its own proper position, its relation to other parties of society, to judge between any of these groups and say this one is master and that one servant, this would be something of a Sisyphean task, but one which none the less ought to be shouldered”.<sup>16</sup>

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<sup>16</sup> E. H. Norman, “Japan’s Emergence as a Modern State”, in John W. Dower (ed.), *Origins of the Modern Japanese State: Selected Writings of E. H. Norman* (New York: Pantheon Books, 1975), p. 316.

According to John Dower, Norman's self-imposed task was "integration, never to lose sight to the 'seamless web' of history".<sup>17</sup> Such integration must remain Sisyphean in any study of history, yet a more inclusive understanding of modern Japanese history still seems to be missing. Yet Norman also wrote: "The crucial problem is to distinguish between deceptive surface changes and those that are deep and therefore harder to detect but in the long run of the most decisive character."<sup>18</sup> Perhaps the historian has yet to uncover significant aspects of the Japanese past which are still relevant to our own immediate and future experiences.

To do so, we need to hear more voices from the "periphery". Critics (and social critics) very often play that role, presenting us with basic issues we tend to forget or simply cannot see. Thus, Andrew Barshay characterises Maruyama as a critic capable of long-term vision. "Maruyama's self-appointed task was to serve as postwar Japan's public ironist. His texts relied heavily on an irony that sought 'to split their audience into insiders and outsiders (and split each member of it)'... By this means Maruyama may have sought to awaken in his audience a latent capacity for historical judgement."<sup>19</sup> We should be grateful to him and the other public critics we have examined for their challenges to collective blindness.

Minobe, Sakai, and Saitô all had their own limitations. But they still speak to us about some of the essential dilemmas of modern Japan, and show us that it is still possible to influence society through critical examination and proposal. They show us that some of the permanent dilemmas of social organisation can be dealt with, even in such hostile conditions as were created by "modernisation" and a "world system", intelligently and humanely.

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<sup>17</sup> John W. Dower, "E. H. Norman, Japan and the Uses of History", *Origins of the Modern Japanese State*, p. 71.

<sup>18</sup> E. H. Norman, "By Way of a Preface: The Shrine of Clio", *Origins of the Modern Japanese State*, p. 106.

<sup>19</sup> Barshay, *op. cit.*, p. 390.

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